TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 272.

THE STATE OF WYOMING *EX RELATIONE* THE WYOMING AGRICULTURAL COLLEGE AND MATT BORLAND ET AL., TRUSTEES, PLAINTIFFS IN ERROR,

vs.

WILLIAM C. IRVINE, AS TREASURER OF THE STATE OF WYOMING.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WYOMING.

FILED APRIL 26, 1906.

(20,222.)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 19, 1906.

1 In the Supreme Court of the United States.

THE STATE OF WYOMING *ex Relatione* THE WYOMING AGRICULTURAL COLLEGE and MATT BORLAND, A. D. LANE, CARRIE B. MEYER, AMELIA S. HALL, and WILLIAM E. HARDIN, as Trustees of the Wyoming Agricultural College, Plaintiffs in Error,

vs.

WILLIAM C. IRVINE, as Treasurer of the State of Wyoming, Defendant in Error.

Stipulation.

It is hereby stipulated and agreed by and between counsel for plaintiffs in error and counsel for defendant in error in the above entitled cause, that the following portions of the record, consisting of the petition in error, assignment of errors, the writ of error, the return of the writ of error, the citation, the petition for mandamus, the order for alternative writ of mandamus, the alternative writ of mandamus omitting therefrom the copy of the petition and order, and the demurrer, filed in the Supreme Court of Wyoming, the opinion of the Supreme Court of Wyoming and the certificate as to Federal questions, are all the portions of the record necessary
2 to be published for the use of the court, in determining the questions involved in this case.

Dated Cheyenne, Wyoming, April 17, 1906.

FENIMORE CHATTERTON,
DOUGLAS A. PRESTON,
PORTER B. COOLIDGE,
SAMUEL T. CORN,
A. E. L. LECKIE,
Attorneys for Plaintiff in Error.
W. E. MULLEN,
JOHN W. LACEY,
NELLIS E. CORTHELL,
C. W. BURDICK,
TIMOTHY F. BURKE,
Attorneys for Defendant in Error.

3 In the Supreme Court of the United States.

THE STATE OF WYOMING *ex Relatione* THE WYOMING AGRICULTURAL COLLEGE and MATT BORLAND, A. D. LANE, CARRIE B. MEYER, AMELIA S. HALL, and WILLIAM E. HARDIN, as Trustees of the Wyoming Agricultural College, Plaintiffs in Error,

vs.

WILLIAM C. IRVINE, as Treasurer of the State of Wyoming, Defendant in Error.

Petition for Writ of Error.

To the Honorable Charles N. Potter, Chief Justice of the Supreme Court of the State of Wyoming:

The petition of the State of Wyoming, *Ex Relatione,* The Wyoming Agricultural College and Matt Borland, A. D. Lane, Carrie

B. Meyer, Amelia S. Hall and William E. Hardin, as trustees of The Wyoming Agricultural College, respectfully shows that on the 1st day of March, A. D. 1906, the Supreme Court of the State of Wyoming, in a certain cause therein pending, wherein your petitioners were plaintiffs and relators, and William C. Irvine, as Treasurer of the State of Wyoming, was defendant and respondent, rendered a final judgment against your petitioners, dismissing
4 your petitioners' petition and alternative writ for mandamus in said cause, at your petitioners' costs, as will appear by the record and proceedings in said cause: and that said Court is the highest court of said State in which a decision in said suit could be had:

And your petitioners claim the right to remove said judgment to the Supreme Court of the United States by writ of error, under Section 709 of the Revised Statutes of the United States, because:

First: Your petitioners, in their petition for mandamus in said cause, specifically set up and claimed certain rights and privileges under the Constitution and Statutes of the United States, and the decision of said court in said cause was against your petitioners and said rights and privileges so set up and claimed as aforesaid:

Second: There is drawn in question, by the pleadings and issues in said cause, the validity of a statute of, and an authority exercised under, the State of Wyoming on the ground of their being repugnant to the Constitution and laws of the United States, said decision being in favor of their validity:

As appears by the record of the proceedings in said cause, which is herewith submitted.

Wherefore, your petitioners pray the allowance of a writ of error returnable into the Supreme Court of the United States, and for citation: and your petitioners will ever pray, *et cetera.*

Dated April 17, 1906.

FENIMORE CHATTERTON,
DOUGLAS A. PRESTON,
PORTER B. COOLIDGE,
Of Chatterton, Preston & Coolidge,
SAMUEL T. CORN AND
A. E. L. LECKIE,
Attorneys for Petitioners and Plaintiffs in Error.

[Endorsed:] Docket No. 2. No. 486. State *ex rel.* The Wyoming Agricultural College *et al.*, Plaintiffs in Error *vs.* William C. Irvine, Treasurer of the State of Wyoming Defendant in Error. Petition for Writ of Error to the Supreme Court United States. Supreme Court, Wyoming, Filed Apr. 17, 1906. William H. Kelly, Clerk. Chatterton, Preston & Coolidge, Samuel E. Corn, and A. E. L. Leckie, Attorneys for Plaintiffs in Error.

5 STATE OF WYOMING:

Supreme Court, *ss:*

Let the writ of error issue upon the execution of a bond by the above named petitioners, to the said William C. Irvine, as Treasurer of the State of Wyoming, in the sum of Five Hundred Dollars.

Dated April 17th, 1906.

CHARLES N. POTTER,
Chief Justice of the Supreme Court of the State of Wyoming.

[Endorsed:] Doc. 2. No. 486. In the Supreme Court, State of Wyoming. Order for Writ. Supreme Court, Wyoming, Filed Apr. 17 1906 William H. Kelly, Clerk.

6 The foregoing petition for writ of error is endorsed by the Clerk of the Court as follows:

"Docket No. 2. No. 486. State *ex. rel.* The Wyoming Agricultural College, *et al.* Plaintiffs in error *vs.* William C. Irvine, Treasurer of the State of Wyoming, defendant in error. Petition for writ of error to the Supreme Court of the United States. Supreme Court Wyoming. Filed April 17, 1906. Wm. H. Kelly, Clerk "Chatterton, Preston & Coolidge, Samuel T. Corn and A. E. L. Leckie, attorneys for Plaintiffs in Error."

7 In the Supreme Court of the United States.

THE STATE OF WYOMING *ex Relatione* THE WYOMING AGRICULTURAL COLLEGE and MATT BORLAND, A. D. LANE, CARRIE B. MEYER, AMELIA S. HALL and WILLIAM E. HARDIN, as Trustees of The Wyoming Agricultural College, Plaintiffs in Error,

against

WILLIAM C. IRVINE, as Treasurer of the State of Wyoming, Defendant in Error.

Assignment of Error.

Now come the above named plaintiffs in error and respectfully submit that in the record, proceedings, decision and final judgment of the Supreme Court of the State of Wyoming, in the above entitled cause, there is manifest error, and for the purpose of having the same reviewed in the Supreme Court of the United States, make the following assignment:

First. The Supreme Court of the State of Wyoming erred in rendering a decision in said cause, sustaining the demurrer of the defendant to the petition and alternative writ of the plaintiffs.

Second. The Supreme Court of the State of Wyoming erred in each and all its findings of law in its said decision and
8 opinion, sustaining said demurrer as aforesaid.

Third. The Supreme Court of the State of Wyoming erred

in entering final judgment in said cause, dismissing the plaintiffs' petition and alternative writ, at the cost of the plaintiffs.

Fourth. The Supreme Court of the State of Wyoming erred in holding and deciding that Chapter Ten of the Session Laws of Wyoming for 1905, in words and figures following, to-wit:

"CHAPTER 10.

"Repeal of Wyoming Agricultural College.

"Be it enacted by the Legislature of the State of Wyoming:

"That Chapter 92 of the Session Laws of the State of Wyoming " of the years A. D. 1890-1891, being an act entitled, 'An act pro- " viding for the establishment of "The Wyoming Agricultural " College," and to provide for the location and government of the " same, and for the instruction to be herein given, and for other " purposes,' approved January 10th, A. D. 1891; and also so much " of said act as is embraced in Sections 504 to 519, both inclusive, " of Chapter 2, Title, 6, of the Revised Statutes, Wyoming, 1899, " entitled, 'The Wyoming Agricultural College,' be and the same " are hereby repealed."

" This act shall take effect and be in force from and after its " passage.

" Approved February 7th, A. D. 1905."

was valid. The validity of said law was denied and drawn in question by the plaintiffs on the following grounds, to-wit:

a. That the said repealing act is unconstitutional and void, because it impairs the obligations of contracts and divests vested property rights, and is in contravention of Section 10 of Article 1 of the Constitution of the United States.

b. That the said repealing act is illegal, null and void, because it violates the compact and agreement entered into between the State of Wyoming and the United States, in the Act of Admission of the State of Wyoming, wherein, by section 10 of said Act, in words and figures following, to-wit:

"SEC. 10. That 90,000 acres of land, to be selected and located as provided in section 4 of this act, are hereby granted to said state for the use and support of an agricultural college in said state, as provided in the acts of congress making donations of lands for such purpose."

the State of Wyoming accepted donations of land for the Wyoming Agricultural College.

c. That the said repealing act is illegal, null and void, because it attempts to destroy the only College in the State of Wyoming, whose leading object is instruction in agriculture and the mechanic arts and is, therefore, in contravention of the provisions of the Acts of Congress providing for the support and maintenance of Agricultural Colleges, to-wit, the Act of July second, 1862, as amended by Act of March Third, 1883; the Act of August Thirtieth, 1890, and the Act of March Second, 1887.

Fifth. The Supreme Court of the State of Wyoming erred in holding and deciding that the Wyoming Agricultural College and the trustees thereof were not legally entitled to receive the federal appropriations for the support of an agricultural college in the State of Wyoming, under the said federal statutes in such case made and provided.

Sixth. The Supreme Court of the State of Wyoming erred in holding and deciding that the defendant was legally and lawfully under said Acts of Congress, disbursing said federal appropriations for the support and maintenance of an agricultural college, to the University of Wyoming, the plaintiffs claiming in their said petition, and it being admitted by the defendant's demurrer, that the University of Wyoming is not an institution whose leading object is instruction in agriculture and the mechanic arts.

Seventh. The Supreme Court of the State of Wyoming erred in holding and deciding that the University of Wyoming is an institution whose leading object is instruction in agriculture and the mechanic arts.

Eighth. The Supreme Court of the State of Wyoming erred in holding and deciding that the University of Wyoming is legally entitled to receive the federal appropriations claimed by plaintiffs in said cause.

Ninth. The Supreme Court of the State of Wyoming erred in holding that the plaintiffs are not legally entitled to receive the federal appropriations for the support and maintenance of an agricultural college in the State of Wyoming, as claimed in their said petition.

Tenth. The Supreme Court of the State of Wyoming erred in holding that Section 499 of the Revised Statutes of Wyoming, in words and figures following, to-wit:

"The University of Wyoming having been designated by the "Secretary of the Interior as the proper institution to receive "and expend the moneys appropriated by an Act of Congress, ap- "proved August thirtieth, eighteen hundred and ninety, entitled "An "Act to apply a portion of the proceeds of the public lands to the "more complete endowment and support of the colleges for the "benefit of agriculture and the mechanic arts, established under "the provisions of an act of congress, approved July second, eigh- "teen hundred and sixty-two," until such time as there may be an "Agricultural College established in this State, separate and apart "from said University of Wyoming, assent is hereby given to all the "terms and conditions of the said act of congress and the grants of "money authorized and made by said act are hereby assented to "and accepted by the State of Wyoming. The Treasurer of the "State of Wyoming is hereby designated as the proper officer to "accept and receive said moneys so granted by said act of Congress, "and to disburse the same in accordance with the provisions of Sec- "tion two of the said act of congress."

was valid. The validity of said last named statute was denied and drawn in question on the ground that it was repugnant to the laws

of the United States providing for the maintenance and support of Agricultural Colleges, to wit, the act of July Second, 1862, as amended by Act of March Third, 1883; the Act of August Thirtieth, 1890, and the Act of March Second, 1887.

Eleventh. The Supreme Court of the State of Wyoming
11 erred in holding and deciding that defendant William C. Irvine, as Treasurer of the State of Wyoming, was legally and lawfully under said Section 499 of the Revised Statutes of Wyoming, disbursing the federal appropriation for the support of an agricultural college, to the University of Wyoming.

For which errors, the plaintiffs, The State of Wyoming, *Ex Relatione,* The Wyoming Agricultural College, and Matt Borland, A. D. Lane, Carrie B. Meyer, Amelia S. Hall and William E. Hardin, as Trustees of The Wyoming Agricultural College, pray that the judgment of the Supreme Court of Wyoming, dated March First, 1906, dismissing the plaintiffs' petition and alternative writ of mandamus, and also the order and judgment of said court of January Thirty-first, 1906, sustaining the demurrer of the defendant to the plaintiffs' petition and alternative writ of mandamus, be reversed, and that said cause be remanded to the said Supreme Court of the State of Wyoming, with instructions to vacate and set aside the order of dismissal and reinstate said cause, and also to vacate and set aside the order sustaining the demurrer of the defendant to the plaintiffs' petition and alternative writ, and directing said court to enter an order overruling the said demurrer, and for costs.

FENIMORE CHATTERTON,
DOUGLAS A. PRESTON,
PORTER B. COOLIDGE,
SAMUEL T. CORN, AND
A. E. L. LECKIE,
Attorneys for said Plaintiffs in Error.

[Endorsed:] Docket 2. No. 486. In the Supreme Court of the United States. State *ex rel.* The Wyoming Agricultural College *et al.* Plaintiffs in Error *vs.* William C. Irvine as Treasurer of the State of Wyoming Defendant in Error. Assignment of Errors. Supreme Court, Wyoming, Filed Apr. 17 1906 William H. Kelly, Clerk. Chatterton, Preston & Cooledge, Samuel T. Corn and A. E. L. Leckie Attorneys for Plaintiffs in Error.

12–15 The foregoing Assignment of Errors is endorsed by the Clerk of the Court as follows:

"Docket 2. No. 486. In the Supreme Court of the United States. State *ex rel.* The Wyoming Agricultural College *et al.,* Plaintiffs in Error, *vs.* William C. Irvine, as Treasurer of the State of Wyoming, Defendant in Error. Assignment of Error-. Supreme Court Wyoming. Filed April 17, 1906. Wm. H. Kelly, Clerk. Chatterton, Preston & Coolidge, Samuel T. Corn, and A. E. L. Leckie, attorneys for Plaintiffs in error."

* * * * * * *

16 In the Supreme Court of the United States.

THE STATE OF WYOMING *ex Relatione* THE WYOMING AGRICULTURAL COLLEGE and MATT BORLAND, A. D. LANE, CARRIE B. MEYER, AMELIA S. HALL and WILLIAM E. HARDIN, as Trustees of The Wyoming Agricultural College, Plaintiff- in Error,

vs.

WILLIAM C. IRVINE, as Treasurer of the State of Wyoming, Defendant in Error.

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable Justices of the Supreme Court of the State of Wyoming, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in said Supreme Court of the State of Wyoming, before you or some one of you, being the highest court of law or equity of said State in which decision could be had in the suit between The State of Wyoming, *ex relatione,* The Wyoming Agricultural College and Matt Borland, A. D. Lane, Carrie B. Meyer, Amelia S. Hall and William E. Hardin, as trustees of The Wyoming Agricultural College, Plaintiff, and William C.
17 Irvine, as Treasurer of the State of Wyoming, Defendant, wherein was drawn in question the construction of a section of the Constitution of the United States, to-wit, Section Eight of Article One of said Constitution, and wherein certain rights and privileges were specially set up and claimed under said section of said Constitution, and the decision was against such rights and privileges, so specially set up and claimed as aforesaid: And wherein also was drawn in question the construction of certain statutes and laws of the United States providing for the support and maintenance of Agricultural Colleges, to-wit, the Act of July Second, 1862, as amended by the Act of March 3rd, 1883, the Act of August 30th, 1890, and the Act of March Second, 1887, under which said Statutes, certain rights and privileges were specially set up and claimed and the decision was against such rights and privileges, so specially set up and claimed, as aforesaid: And wherein also was drawn in question, the validity of a statute of the State of Wyoming, to-wit, Section 499 of the Revised Statutes of Wyoming, in words and figures following, to-wit:

"The University of Wyoming having been designated by the "secretary of the interior as the proper institution to receive and "expend the moneys appropriated by an act of congress, approved "August thirtieth, eighteen hundred and ninety, entitled, 'An Act "to apply a portion of the proceeds of the public lands to the more "complete endowment and support of the colleges for the benefit "of agriculture and the mechanic arts, established under the pro-"visions of an act of congress, approved July second, eighteen hun-

" dred and sixty-two,' until such time as there may be an agricultural " college established in this state, separate and apart from said Uni- " versity of Wyoming, assent is hereby given to all the terms and " conditions of the said act of congress and the grants of money " authorized and made by said act are hereby assented to and ac- " cepted by the State of Wyoming. The treasurer of the State of " Wyoming is hereby designated as the proper officer to accept and " receive said moneys so granted by said act of congress, and to dis- " burse the same in accordance with the provisions of section two, " of the said act of congress."

on the ground of its being repugnant to certain laws and statutes of the United States, to-wit, said Act of July Second, 1862, as amended by the Act of March Third, 1883; said Act of August 30th, 1890, and said Act of March Second, 1887; the decision was in favor of its validity: And wherein also was drawn in question an au-
18 thority exercised under said last named State Statute, on the ground that it was repugnant to said last named Federal Statutes, and the decision was in favor of the validity of such authority: And wherein also was drawn in question the validity of a certain other Statute of the State of Wyoming, to-wit, Chapter Ten of the Session Laws of Wyoming for 1905, in words and figures following, to-wit:

" CHAPTER 10.

" *Repeal of Wyoming Agricultural College.*

" Be it enacted by the Legislature of the State of Wyoming:

" That Chapter 92 of the Session Laws of the State of Wyoming " of the years A. D. 1890-1891, being an Act entitled, 'An Act pro- " viding for the establishment of "The Wyoming Agricultural Col- " lege," and to provide for the location and government of the same, " and for the instruction to be therein given, and for other purposes,' " approved January 10th, A. D. 1891; and also so much of said act " as is embraced in Sections 504 to 519, both inclusive, of Chapter 2, " Title 6, of the Revised Statutes, Wyoming, 1899, entitled. 'The " Wyoming Agricultural College,' be and the same are hereby re- " pealed.

" This act shall take effect and be in force from and after its " passage.

" Approved February 7th, A. D. 1905."

on the ground that said last named state statute is repugnant to the Constitution and laws of the United States, to-wit, Section eight of Article One of the Constitution of the United States, and the Act of Congress of July Second, 1862, as amended by Act of March Third, 1883, the Act of August Thirtieth, 1890, and the Act of March Second, 1887; and the decision was in favor of the validity of said last named statute of Wyoming: manifest error hath happened to the great damage of the plaintiffs in error, as by their complaint

appears, we being willing that an error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, on or before the 17th Day of May, A. D. 1906, next, in the Supreme Court, to be then and there held that, the record and proceed-
19 ings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court, this 17th Day of April, in the year of our Lord, One Thousand Nine Hundred and Six.

[Seal United States Circuit Court, District of Wyoming.]

LORIN KIRK,
Clerk of the United States Circuit Court
for the District of Wyoming,
By CHARLES J. OHNHAUS, *Deputy.*

[Endorsed:] Docket 2. No. 486. In the Supreme Court of the United States. State *ex rel.* Wyoming Agricultural College *et al.*, Plaintiffs in Error, *vs.* William C. Irvine, as Treasurer, Defendant in Error. Writ of Error. Supreme Court, Wyoming. Filed Apr. 17, 1906. William H. Kelly, Clerk.

20 The foregoing writ of error bears the following endorsement of the Clerk of the Court, to-wit:

"Docket 2. No. 486. In the Supreme Court of the United States. State *ex rel.* Wyoming Agricultural College, *et al.* Plaintiffs in Error, *vs.* William C. Irvine, as Treasurer, Defendant in Error. Writ of Error. Supreme Court Wyoming. Filed April 17, 1906. Wm. H. Kelly Clerk."

21 *Return* of *Writ.*

UNITED STATES OF AMERICA,
Supreme Court of Wyoming, ss:

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States, a duly certified transcript of the complete record and proceedings in the within entitled cause, with all things concerning the same. I do also transmit herewith the original petition for writ of error to the Supreme Court of the United States, and the original allowance of said writ by the Chief Justice of the Supreme Court of the State of Wyoming and endorsed on said petition, the assignment of errors, copy of bond and

the original citation issued by the said Chief Justice as full and entire as the same were respectively filed and appear on file in my office.

In witness whereof, I hereunto subscribe my name, and affix the seal of said Supreme Court, in the City of Cheyenne, this April 17th, 1906.

[Seal Supreme Court of the State of Wyoming.]

WILLIAM H. KELLY,
Clerk of the Supreme Court
of the State of Wyoming.

In the Supreme Court of the United States.

THE STATE OF WYOMING *ex Relatione* THE WYOMING AGRICULTURAL COLLEGE and MATT BORLAND, A. D. LANE, CARRIE B. MEYER, AMELIA S. HALL and WILLIAM E. HARDIN, as Trustees of The Wyoming Agricultural College, Plaintiffs in Error,

vs.

WILLIAM C. IRVINE, as Treasurer of the State of Wyoming, Defendant in Error.

22 In the Supreme Court of the United States.

THE STATE OF WYOMING *ex Relatione* THE WYOMING AGRICULTURAL COLLEGE and MATT BORLAND, A. D. LANE, CARRIE B. MEYER, AMELIA S. HALL and WILLIAM E. HARDIN, as Trustees of The Wyoming Agricultural College, Plaintiffs in Error,

vs.

WILLIAM C. IRVINE, as Treasurer of the State of Wyoming, Defendant in Error.

Citation.

The United States of America to William C. Irvine, as Treasurer of the State of Wyoming:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the City of Washington on or before the 17th day of May A. D. 1906, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the State of Wyoming, wherein the State of Wyoming, *ex relatione*, The Wyoming Agricultural College, and Matt Borland, A. D. Lane, Carrie B. Meyer, Amelia S. Hall and William E. Hardin, as Trustees of The Wyoming Agricultural College, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, men-
23 tioned in the said writ of error, should not be corrected and justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the

Supreme Court of the United States, this 17th day of April, in the year of our Lord, one thousand, nine hundred and six.

[Seal Supreme Court of the State of Wyoming.]

CHARLES N. POTTER,
Chief Justice of the Supreme Court of the State of Wyoming.

Attest:
WILLIAM H. KELLY,
Clerk of the Supreme Court of the State of Wyoming.

CHEYENNE, WYOMING, *April 17th*, 1906.

We, attorneys of record for the defendant in error, in the above entitled cause, hereby acknowledge due service of the above citation, and enter an appearance in the Supreme Court of the United States.

W. E. MULLEN,
JOHN W. LACEY,
B.,
NELLIS E. CORTHELL,
B.,
C. W. BURDICK,
TIMOTHY F. BURKE,
Attorneys for William C. Irvine, as Treasurer of the State of Wyoming, Defendant in Error.

[Endorsed:] In the Supreme Court of the United States. State *ex rel.* The Wyoming Agricultural College, *et al.*, Plaintiffs in Error *vs.* William C. Irvine, as Treasurer, Defendant in Error. Citation.

24 The foregoing Citation is endorsed by the Clerk of the Court as follows:

"In the Supreme Court of the United States. State *ex rel.* The Wyoming Agricultural College *et al.* Plaintiffs in Error *vs.* William C. Irvine, as Treasurer, Defendant in Error. Citation. Supreme Court Wyoming. Filed April 17, 1906. Wm. H. Kelly, Clerk."

25 In the Supreme Court of the United States.

THE STATE OF WYOMING *ex Relatione* THE WYOMING AGRICULTURAL COLLEGE and MATT BORLAND, A. D. LANE, CARRIE B. MEYER, AMELIA S. HALL, and WILLIAM E. HARDIN, as Trustees of the Wyoming Agricultural College, Plaintiffs in Error,

vs.

WILLIAM C. IRVINE, as Treasurer of the State of Wyoming, Defendant in Error.

UNITED STATES OF AMERICA,
Supreme Court of Wyoming, ss:

Certificate as to Federal Questions.

I, Charles N. Potter, Chief Justice of the Supreme Court of the State of Wyoming do hereby certify that there are several distinct federal questions involved in the above entitled cause, which are subject to review in the Supreme Court of the United States;

That there was drawn in question the construction of the Constitution of the United States, to-wit, Section eight, of Article one, of said Constitution, under which were specially set up and claimed by the plaintiffs in error, certain rights and privileges and the decision was against such rights and privileges;

26 That there was drawn in question the construction of certain statutes and laws of the United States, providing for the maintenance and support of agricultural colleges, to-wit, the Act of July 2nd, 1862, as amended by the Act of March 3rd, 1883, the Act of August 30th, 1890 and the Act of March 2nd, 1887, under which said statutes, certain rights and privileges were specially set up and claimed by the plaintiffs in error, and the decision was against such rights and privileges;

That there was drawn in question the validity of the statutes of the State of Wyoming, to-wit, Section 499 of the Revised Statutes of Wyoming, in words following, to-wit:

"The University of Wyoming having been designated by the Secretary of the Interior as the proper institution to receive and expend the moneys appropriated by an act of Congress, approved August 30th, 1890, entitled 'An Act to Apply a Portion of the proceeds of the Public Lands to the more complete Endowment and Support of the Colleges for the benefit of Agriculture and the Mechanic Arts, Established under the provisions of an Act of Congress, Approved July second, eighteen hundred and sixty-two,' until such time as there may be an Agricultural College established in this State separate and apart from said University of Wyoming, assent is hereby given to all the terms and conditions of the said Act of Congress and the grants of money authorized and made by said act are hereby assented to and accepted by the State of Wyoming. The treasurer of the State of Wyoming is hereby designated as the proper officer to accept and receive said money so granted by

said Act of Congress, and to disburse the same in accordance with the provisions of Section 2 of the said Act of Congress."

on the ground of its being repugnant to certain laws of the United States relating to the endowment and support of Agricultural Colleges, to-wit, the Act of July second, eighteen hundred sixty-two, as amended by the act of March third, eighteen hundred eighty-three, the act of August thirtieth eighteen hundred ninety and the act of March second, eighteen hundred and eighty-seven, the decision being in favor of its validity;

That there was also drawn in question an authority exercised under said last named State Statute, on the ground that it is
27 repugnant to said last named federal statute and the decision was in favor of the validity of such authority;

And that there was also drawn in question the construction and validity of a certain other statute of the State of Wyoming, to-wit, Chapter ten of the Session Laws of Wyoming, for nineteen hundred and five, in words and figures following, to-wit:

"CHAPTER 10.

"Repeal of Wyoming Agricultural College.

"Be it enacted by the Legislature of the State of Wyoming:

"That Chapter 92 of the Session Laws of the State of Wyoming of the years A. D. 1890-1891, being an Act entitled, "An Act Providing for the establishment of 'The Wyoming Agricultural College,' and to provide for the location and government of the same and for the instruction to be therein given, and for other purposes," approved January 10th, A. D. 1891; and also so much of said act as is embraced in Sections 504 to 519, both inclusive, of Chapter 2, Title 6, of the Revised Statures, Wyoming, 1899, entitled "The Wyoming Agricultural College," be and the same are hereby repealed.

"This act shall take effect and be in force from and after its passage.

"Approved February 7th, A. D. 1905."

on the ground that said last named State statute is repugnant to the constitution and laws of the United States, to-wit, Section eight of Article one, of said Constitution and the act of Congress of July second, eighteen hundred and sixty-two, as amended by the act of March third, eighteen hundred and sixty-three, the act of August thirtieth, eighteen hundred and ninety and the act of March second, eighteen hundred and eighty-seven, and the decision was in favor of the validity of said last named statute of Wyoming.

CHARLES N. POTTER,
Chief Justice of the Supreme Court of the State of Wyoming.

28 In the Supreme Court of the State of Wyoming.

THE STATE OF WYOMING *ex Relatione* THE WYOMING AGRICULTURAL COLLEGE and MATT BORLAND, A. D. LANE, CARRIE B. MEYER, AMELIA S. HALL, and WILLIAM E. HARDIN, as Trustees of the Wyoming Agricultural College, Plaintiff-,

against

WILLIAM C. IRVINE, as Treasurer of the State of Wyoming, Defendant.

Petition of Mandamus.

To the Honorable Supreme Court of the State of Wyoming and the Justices thereof:

Your petitioners, the State of Wyoming, on the relation of The Wyoming Agricultural College and the trustees aforesaid, would respectfully represent and show to the Court:

First: That on the second day of July A. D. 1862, the Congress of the United States, passed a law commonly designated and hereinafter referred to as the "Morrill Law" donating certain public lands to the several states and territories, which might provide colleges for the benefit of agriculture and the mechanic arts, section four of said act being subsequently amended by an act of Congress passed March, third, A. D. 1883, entitled, "An Act to Amend and Act Donating Public Lands to the Several States and Territories, Which may Provide Colleges for the Benefit of Agriculture and the Mechanic Arts."

That said original law of July, second, A. D. 1862, including said section four as amended by said act of March, third, A. D. 1883, is in words and figures, following, to-wit:

"Be it enacted &c. That there by granted to the several states, for the purposes hereinafter mentioned, an amount of public lands, to be appropriated to each state a quantity equal to thirty thousand acres for each senator and representative in Congress to which the states are respectively entitled by the apportionment under the census of eighteen hundred and sixty: Provided, that no mineral lands shall be selected or purchased under the provisions of this act."

29 "SEC. 2. That the lands aforesaid after being surveyed, shall be apportioned to the several states in sections or subdivisions of sections, not less than one quarter of a section; and whenever there are public lands in a state subject to sale at private entry at one dollar and twenty-five cents per acre, the quantity to which said state shall be entitled shall be selected from such lands within the limits of such State, and the Secretary of the Interior is hereby directed to issue to each of the States in which there is not the quantity of public lands subject to sale at private entry at one dollar and twenty-five cents per acre, to which said State may be entitled under the provisions of this act, land scrip*t* to the amount in acres for the deficiency of its distributive share; said scrip*t* to be

sold by said States and the proceeds thereof applied to the uses and purposes prescribed in this act, and for no other use and purpose whatsoever: Provided, that in no case shall any state to which land scrip*t* may thus be issued be allowed to locate the same within the limits of any other state, or of any territory of the United States, but their assignees may thus locate said land scrip*t* upon any of the unappropriated lands of the United States subject to sale at private entry at one dollar and twenty-five cents, or less, per acre: And provided, further, That not more than one million acres shall be located by such assignees in any of the States: And provided, further, That no such location shall be made before one year from the passage of this act."

"SEC. 3. That all the expenses of management, superintendence, and taxes from date of selection of said lands, previous to their sales, and all expenses incurred in the management and disbursement of moneys which may be received therefrom, shall be paid by the States to which they belong out of the treasury of said States, so that the entire proceeds of the sale of said lands shall be applied without any diminution whatever to the purposes hereinafter mentioned."

"SEC. 4. (As amended by Act March, third, 1883.)

That all moneys derived from the sale of lands aforesaid by the States to which the lands are apportioned, and from the sales of land-scrip*t* hereinbefore provided for, shall be invested in stocks of the United States or the States, or some other safe stocks; or the same may be invested by the States having no state stocks, in any other manner after the legislatures of such states shall have assented thereto, and engaged that such funds shall yeild not less than five per centum upon the amount so invested and that the principal thereof shall forever remain unimpaired: Provided, That the moneys so invested or loaned shall constitute a perpetual fund, the capital of which shall remain forever undiminished (except so far as may be provided in section five of this act), and the interest of which shall be inviolably appropriated, by each state which may take and claim the benefit of this act to the endowment, support, and maintenance of at least one college where the leading object shall be without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts, in such manner as the legislatures of the States may respectively prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life."

"SEC. 5. That the grant of land and land-scrip*t* hereby authorized shall be made on the following conditions, to which, as well as to the provisions hereinbefore contained, the previous assent of the several states shall be signified by legislative acts:"

"First. If any portion of the fund invested, as provided by the foregoing section, or any portion of the interest thereon, shall by any action or contingency, be diminished or lost, it shall be replaced by the state to which it belongs so that the capital of the fund shall remain forever undiminished, and the annual interest shall be regu-

larily applied without diminution to the purposes mentioned
30 in the fourth section of this act, except that a sum, not exceeding ten per centum upon the amount received by any state under the provisions of this act, may be expended for the purchase of lands for sites or experimental farms whenever authorized by the respective legislatures of said States."

"Second. No portion of said fund nor the interest thereon, shall be applied, directly or indirectly under any pretense whatever, to the purchase, erection, preservation, or repair of any building or buildings."

"Third. Any State which may take and claim the benefit of the provisions of this act shall provide within five years, at least not less than one College, as described in the fourth section of this act, or the grant to such state shall cease; and the said State shall be bound to pay the United States the amount received of any lands previously sold, and that the title to purchasers under the State shall be valid."

"Fourth. An annual report shall be made regarding the progress of each college, recording any improvements and experiments made, with their cost and result, and such other matters, including State industrial and economical statistics, as may be supposed useful; one copy of which shall be transmitted by mail free, by each, to all the other colleges which may be endowed under the provisions of this act, and also one copy to the Secretary of the Interior."

"Fifth. When lands shall be selected from those which have been raised to double the minimum price, in consequence of railroad grants, they shall be computed to the States at the maximum price, and the number of acres proportionally diminished."

"Sixth. No state while in a condition of rebellion or insurrection against the government of the United States shall be entitled to the benefit of this act."

"Seventh. No State shall be entitled to the benefits of this act unless it shall express its acceptance thereof by its legislature within two years from the date of its approval by the president."

"SEC. 6. That the land-script issued under the provisions of this act shall not be subject to location until after the first day of January, one thousand eight hundred and sixty-three."

"SEC. 7. That the land officers shall receive the same fees for locating land-script issued under the provisions of this act as is now allowed for the location of military bounty land warrants under existing laws: Provided, their maximum compensation shall not be thereby increased."

"SEC. 8. That the governor of the several states to which script shall be issued under this act shall be required to report annually to congress all sales made of such script until the whole shall be disposed of, the amount received for the same, and what appropriation has been made of the proceeds."

Second. And your petitioners further allege that the Congress of the United States, on, to-wit, the thirtieth day of August, A. D. 1890, passed an act entitled "An Act to Apply a Portion of the Proceeds of the Public Lands to the More Complete Endowment and

Support of the Colleges for the Benefit of Agriculture and the Mechanic Arts Established under the Provisions of an Act of Congress Approved, July second, Eighteen Hundred and Sixty-two," which said act is hereinafter referred to as the eighteen ninety
31 "Morrill Law" and is in words and figures following to-wit:

"Be it enacted etc., that there shall be, and hereby is, annually appropriated, out of any money in the Treasury not otherwise appropriated, arising from the sales of public lands, to be paid as hereinafter provided, to each state and territory for the more complete endowment and maintenance of Colleges for the benefit of Agriculture and the Mechanic Arts now Established, *for* which may be hereafter established, in accordance with an act of congress approved July, second, eighteen hundred and sixty-two, the sum of fifteen thousand dollars for the year ending June, thirtieth, eighteen hundred and ninety, and an annual increase of the amount of such appropriation thereafter for ten years by an additional sum of one thousand dollars over the preceding year, and the annual amount to be paid thereafter to each state and territory shall be twenty-five thousand dollars to be applied only to instruction in agriculture, the mechanic arts, the English language and the various branches of mathematical, physical, natural and economic science with special reference to their applications in the industries of life, and to the facilit*eis* for such instruction: Provided, That no money *shall* paid out under this act to any state or territory for the support or maintenance of a college where a distinction of race or color is made in the admission of students, by the establishment and maintenance of such colleges separately for white and colored students shall be held to be a compliance with the provisions of the act if the funds received in such state or territory be equitably divided as hereinafter set forth: Provided, That in any state in which there has been one college established in pursuance of the act of July second, eighteen hundred and sixty-two, and also in which an educational institution of like character has been established, or may be hereafter established, and is now aided by such state from its own revenue, for the education of colored students in agriculture and the mechanic arts, however named or styled, or whether or not, it has received money heretofore under the act to which this act is an amendment, the legislature of such state may propose and report to the secretary of the interior a just and equitable division of the funds to be received under this act between one college for white students and one institution for colored students established as aforesaid, which shall be divided into two parts and paid accordingly, and thereupon such institution for colored students shall be entitled to the benefits of this act and subject to its provisions, as much as it would have been if it had been included under the act of eighteen hundred and sixty-two, and the fulfillment of the foregoing provisions shall be taken as a compliance with the provision in reference to separate colleges for white and colored students."

"SEC. 2. That the sums hereby appropriated to the states and territories for the further endowment and support of colleges shall be annually paid on or before the thirty-first day of July of each year,

by the secretary of the treasury, upon the warrant of the secretary of the interior, out of the treasury of the United States, to the State or territorial treasurer, or to such officers as shall be designated by the laws of such state or territory to receive the same, who shall, upon the order of the trustees of the college, or the institution for colored students, immediately pay over said sums to the treasurers of the respective colleges or other institutions entitled to receive the same, and such treasurers shall be required to report to the secretary of agriculture and to the secretary of the interior, on or before the first day of September of each year, a detailed statement of the amount so received and of its disbursement. The grants of moneys authorized by this act are made subject to the legislative assent of the several states and territories to the purpose of said grants: Provided, That payments of such installments of the appropriation herein made as shall become due to any state before the adjournment of the
32 regular session of legislature meeting next *next* after the passage of this act shall be made upon the assent of the governor thereof, duly certified to the secretary of the treasury."

"SEC. 3. That if any portion of the moneys received by the designated officer of the state or territory for the further and more complete endowment, support, and maintenance of colleges, or of institutions for colored students, as provided in this act, shall, by any action or contingency be diminished or lost, or be misapplied, it shall be replaced by the state or territory to which it belongs, and until so replaced no subsequent appropriation shall be apportioned or paid to such state or territory; and no portion of said moneys shall be applied, directly or indirectly, under any pretense whatever to the purchase, erection, preservation, or repair of any building or buildings. An annual report by the president of each of said colleges shall be made to the secretary of agriculture, as well as to the secretary of the interior, regarding the condition and progress of each college, including statistical information in relation to its receipts and expenditures, its library, the number of its students and professors, and also as to any improvements and experiments made under the direction of any experiment stations attached to said colleges, with their cost and result, and such other industrial and economical statistics as may be regarded as useful, one copy of which shall be transmitted by mail free to all other colleges further endowed under this act."

"SEC. 4. That on or before the first day of July, in each year, after the passage of this act, the secretary of the interior shall ascertain and certify to the secretary of the treasury as to each state and territory whether it is entitled to receive its share of the annual appropriation for colleges, or of institutions for colored students, under this act, and the amount which thereupon each is entitled, respectively, to receive. If the secretary of the interior shall withhold a certificate from any state or territory of its appropriation the facts and reasons therefor shall be reported to the president and the amount involved shall be kept separate in the treasury until the close of the next Congress, in order that the state or territory may if it should so desire, appeal to congress from the determination of the

secretary of the interior. If the next congress shall not direct such sum to be paid it shall be covered into the treasury. And the secretary of the interior is hereby charged with a proper administration of this law."

"SEC. 5. That the secretary of the interior shall annually report to congress the disbursements which have been made in all the states and territories, and also whether the appropriation of any state or territory has been withheld and if so the reasons therefor."

"SEC. 6. Congress may at any time, amend, suspend, or repeal any or all of the provisions of this act."

Third. And your petitioners further allege that the Congress of the United States, on, to-wit, the second day of March, A. D. 1887, passed an act entitled, "An Act to Establish Agriculture Experiments Stations in Connection with the Colleges Established in the Several States under the Provisions of An Act Approved July Second, Eighteen hundred and sixty-two, and of the Acts Supplementary thereto," which said last named act is commonly designated and is hereinafter referred to as the "Hatch Law" and is in words
33 the figures following, to-wit,

"SEC. 1. Be it enacted, &c., That in order to aid in acquiring and diffusing among the people of the United States useful and practical information on subjects connected with agriculture, and to promote scientific investigation and experiment respecting the principles and application of agricultural science, there shall be established, under direction of the college or colleges or agricultural department of colleges in each state or territory established, or which may hereafter be established, in accordance with the provisions of an act approved July, second, eighteen hundred and sixty-two, entitled 'An Act Donating Public Lands to the Several States and Territories which may Provide Colleges for the Benefit of Agriculture and the Mechanic Arts,' or any of the supplements to such act, a department to be known and designated as and 'agricultural experiment station:' Provided, That in any state or territory in which two such colleges have been or may be so established the appropriation hereinafter made to such state or territory shall be equally divided between such colleges, unless the legislature of such state or territory shall otherwise direct."

"SEC. 2. That it shall be the object and duty of said experiment stations to conduct original researches or verify experiments on the physiology of plants and animals; the diseases to which they are severally subject, with the remedies for the same; the chemical composition of useful plants at their different stages of growth; the comparative advantages of rotative cropping as pursued under a varying series of crops; the capacity of new plants or trees for acclimation; the analysis of soils and water; the chemical composition of manures, natural or artificial, with experiments designed to test their comparative effects on crops of different kinds; the adaptation and value of grasses and forage plants; the composition and digestibility of the different kinds of food for domestic animals; the scientific and economic questions involved in the production of butter and cheese; and such other researches or experiments bearing directly on the agri-

cultural industry of the United States as may in each case be deemed advisable, having due regard to the varying conditions and needs of the respective states or territories."

"SEC. 3. That in order to secure, as far as practicable, uniformity of method and result in the work of said stations, it shall be the duty of the United States Commissioner of agriculture to furnish forms, as far as practicable, for the tabulation of results of investigation or experiments; to indicate, from time to time, such lines of inquiry as to him shall seem most important; and, in general, to furnish such advise and assistance as will best promote the purposes of this act. It shall be the duty of each of said stations, annually, on or before the first day of February, to make to the governor of the state or territory in which it is located a full and detailed report of its operations, including a statement of receipts and expenditures, a copy of which report shall be sent to each of said stations, to the said commissioner of agriculture, and to the secretary of the treasury of the United States."

"SEC. 4. The bulletins or reports of progress shall be published at said stations at least once in three months, one copy of which shall be sent to each newspaper in the states or territories in which they are respectively located, and to such individuals actually engaged in farming as may request the same, and as far as the means of the station will permit. Such bulletins or reports and the annual reports of said stations shall be transmitted in the mails of the United States free of charge for postage, under such regulations as the Post Master-General may from time to time prescribe."

"SEC. 5. That for the purpose of paying the necessary expenses of conducting investigations and experiments and printing and distributing the results as hereinbefore prescribed, the sum of fifteen thousand dollars per annum is hereby appropriated to each
34 state, to be specially provided for by Congress in the appropriations from year to year, and to each territory entitled under the provisions of section eight of this act, out of any money in the Treasury proceeding from the sales of public lands, to be paid in equal quarterly payments on the first day of January, April, July, and October, in each year, to the Treasurer or other officer duly appointed by the governing boards of said colleges to receive the same, the first payment to be made on the first day of October, eighteen hundred and eighty-seven: Provided, however, That out of the first annual appropriation so received by any station an amount not exceeding one-fifth may be expended in the erection, enlargement, or repair of a building or buildings necessary for carrying on the work of such station; and thereafter an amount not exceeding five per centum of such annual appropriation may be so expended."

"SEC. 6. That whenever it shall appear to the Secretary of the Treasury from the annual statement of receipts and expenditures of any of said stations that a portion of the preceeding annual appropriation remains unexpended, such amount shall be deducted from the next succeeding annual appropriation to such station, in order that the amount of money appropriated to any station shall not ex-

ceed the amount actually and necessarily required for its maintenance and support."

"SEC. 7. That nothing in this act shall be construed to impair or modify the legal relations existing between any of the said colleges and the government of the States or Territories in which they are respectively located."

"SEC. 8. That in states having colleges entitled under this section to the benefits of this act and having also agricultural experiment stations established by law separate from said colleges, such states shall be authorized to apply such benefits to experiments as stations so established by such States; and in case any state shall have established under the provisions of said act of July, second, aforesaid, an agricultural department or experimental station in connection with any university, college or institution not distinctively an agricultural college or school, and such state shall have established or shall hereafter establish a separate agricultural college or school, which shall have connected therewith an experimental farm or station, the legislature of such State may apply in whole or in part the appropriation by this act made, to such separate agricultural college, or school, and no legislature shall by contract express or implied disable itself from so doing."

"SEC. 9. That the grants of moneys authorized by this act are made subject to the legislative assent of the several States and Territories to the purposes of said grants: Provided, That payment of such installments of the appropriation herein made as shall become due to any state before the adjournment of the regular session of its legislature meeting next after the passage of this act shall be made upon the assent of the governor thereof duly certified to the Secretary of the Treasury."

"SEC. 10. Nothing in this act shall be held or construed as binding the United States to continue any payments from the treasury to any or all of the States or institutions mentioned in this act, but Congress may at any time amend, suspend or repeal any or all the provisions of this act."

Fourth: And your petitioners further allege that the foregoing constitute all the Federal Laws respecting Agricultural Colleges and Experimental Stations material or necessary to the determination of the matters in controversy in this cause.

35 Fifth. Your petitioners further allege that section twenty-three of article seven of the constitution of the state of Wyoming, provides as follows, to-wit:

SECTION 23. The legislature shall have no power to change or to locate the seat of government, the state university, insane asylum, or state penitentiary, but may after the expiration of ten (10) years after the adoption of this constitution, provide by law for submitting the question of the permanent locations thereof, respectively to the qualified electors of the state, at some general election and the majority of all votes upon said question cast at said election shall be necessary to determine the location thereof; but for said period of ten (10) years, and until the same are respectively and permanently

located, as herein provided, the location of the seat of government and said institutions shall be as follows:

The seat of government shall be located at the City of Cheyenne in the County of Laramie. The State university shall be located at the city of Laramie, in the county of Albany. The insane asylum shall be located at the town of Evanston, in the county of Uinta. The penitentiary shall be located at the City of Rawlins, in the County of Carbon; but the legislature may provide by law that said penitentiary may be converted to other public uses. *The legislature shall not locate any other public institutions except under general laws and by vote of the people.*"

Sixth. Your petitioners further allege that under and in pursuance of the power and authority in them vested by said section twenty-three of article seven of the State Constitution of Wyoming, or to such part thereof as relates to the location of public institutions, other than those enumerated in said section, the first legislature of the State of Wyoming, duly passed a law providing for the establishment of the Wyoming Agricultural College and submitting to the vote of the people of the state the question of the location of said college which said law was approved January 10th, 1891, and took effect and became in force from and after its passage and is in words and figures following, to-wit:

"Be it enacted by the Legislature of the State of Wyoming:

SECTION 1. There shall be established in this state "The Wyoming Agricultural College," which shall be located by vote of the people as hereinafter provided, and which shall be a state public educational institution,"

SEC. 2. The objects of said agricultural college shall be to provide an efficient means of imparting to young men and young women, without regard to color, on equal terms, a liberal education and a thorough knowledge of such arts and sciences as will aid in the prosecution of agricultural pursuits with their varied applications."

36 SEC. 3. The government of said agricultural college shall be vested in a board of five trustees, who shall be appointed by the governor, by and with the advice and consent of the senate."

SEC. 4. The term of office of such trustees shall be four years, except as provided in the next two sections."

SEC. 5. It shall be the duty of the governor at the next session of the legislature after the locating of such agricultural college as herein provided, to nominate, by and with the advise and consent of the senate, five residents of the state, as members of the board of trustees of said agricultural college, three of whom shall serve for two years, and two of whom shall serve for four years, and thereafter during the session of each succeeding legislature, the governor shall nominate, and by and with the advice and consent of the senate, appoint successors to such of said trustees whose term of office shall have expired or will expire during such session of the legislature."

"SEC. 6. Any vacancy in the said board of trustees caused by death, resignation, removal from the state, or otherwise, shall be filled by appointment to be made by the governor, which appoint-

ment shall continue until the next session of the legislature and no longer."

SEC. 7. A majority of said board of trustees shall constitute a quorum for the transaction of business, and the said board shall hold regular meetings at the seat of the said agricultural college on the first day of the months of January, April, July and October of each year."

"SEC. 8. The said board of trustees shall have power:

First—To elect one of its members president of said board.

Second—To appoint a secretary and treasury from among the members of such board and such other officers as it may deem necessary for the good order and government of the said agricultural college, and to prescribe the duties and fix the compensation of such officers."

Third—To provide by resolution or otherwise for special meetings of such Board."

Fourth—To procure by purchase, donation or otherwise, in the name of the state of Wyoming, within or near the limits of the city, town or village chosen as the seat of said agricultural college, as hereinafter provided, a suitable site upon which to erect suitable, convenient and proper buildings for the said agricultural college and to superintend the erection of such buildings; Provided, That said trustees shall not purchase any site or contract for the erection of any building until the funds shall be in their hands with which to pay for the same."

Fifth—To possess and use for the benefit of the said agricultural college the building and sites that may be provided therefor."

Sixth—To take and hold for the use and benefit of the said agricultural college any real or personal estate, and to dispose of the same in such manner as they may deem most conducive to the interests of said agricultural college."

Seventh—To expend any and all income that may be placed under the control of such board, by donation or by law or otherwise, in such manner as shall best promote the interests and prosperity of the said institution."

Eighth—To elect a president, such professors, tutors and other officers of the faculty of the said institution, as they may deem necessary, who shall hold their offices during the pleasure of such trustees."

Ninth—To prescribe the duties, salaries and emoluments of such professors, tutors and officers."

Tenth—To prescribe the course of study and discipline to be observed in said institution and the price of tuition therein."

Eleventh—To make all by-laws and rules necessary and proper to carry into effect the powers herein conferred."

"SEC. 9. The president, professors and tutors of said agricultural college, shall be styled the faculty thereof, and as such shall have power:"

37 "First.—To enforce the rules and regulations adopted by the trustees of said institution for the government of the students thereof."

"Second.—To reprove and censure students as they may deserve, and to suspend those who continue refractory until a determination of the board of trustees can be had thereof."

"Third.—To grant and confer, by and with the consent and approval of the trustees, such literary honors and degrees as are usually granted and conferred in institutions of the same class in the United States, and in testimony thereof to give suitable diplomas under the seal of the state and signature of the faculty."

"SEC. 10. No member of the faculty of the said agricultural college, shall, while acting in that capacity, be a trustee thereof."

"SEC. 11. No religious qualification or test shall be required of any student, trustee, president, professor, tutor, or officer of said institution, or as a condition for admission to any privilege in the same, and no sectarian tenets or principles shall be taught, instructed or inculcated at said institution, by any president, professor or tutor therein."

"SEC. 12. The trustees of said institution shall provide for the tuition, free of charge, of such students from each county as may be selected and appointed by the board of county commissioners of such county."

"SEC. 13. In the management and application of any property real or personal, devised or bequeathed to the use of said agricultural college, or the proceeds thereof, the trustees shall conform to the will and directions of the donor thereof, if any such directions shall have been connected with such grant, devise, bequest or donation."

"SEC. 14. The trustees of said institution shall require their treasurer to give a bond with sureties to be approved by them, in double the sum likely to come into his hands."

"SEC. 15. The secretary of said board of trustees shall keep a true record of the proceedings of the board and shall make and certify copies thereof. He shall also keep an account of the students in the institution, according to their classes, showing their respective ages and places of residence."

"SEC. 16. The treasurer of said board shall keep full, true and faithful accounts of all moneys received by him as such treasurer, and of all expenditures and disbursements thereof. He shall pay out the moneys received by him as such treasurer, on the order of the board of trustees, certified by their secretary. He shall keep accurate accounts of all persons having dealings with the institution for which he is treasurer. Shall collect the tuition fees due the same and shall submit a full and proper statement of the finances of such institution, of its receipts and disbursements, at each of the regular meetings of the said board, and at such other times as said board may direct."

"SEC. 17. A board of visitors for said agricultural college to consist of three persons, shall be appointed biennially, at the commencement of the college year by the governor of the state. It shall be the duty of the board of visitors for said institution to make a personal examination into the state and condition thereof and all its affairs, twice at least in each year, and report the result to the governor, sug-esting such improvements, as they may deem proper,

which report shall be submitted to the legislature at its next session. Such visitors shall receive no compensation for their services."

"SEC. 18. The location of the said Agricultural college shall be determined by vote of the people at the general election, to be held on Tuesday next after the first Monday in November, in the year one thousand eight hundred and ninety-two. Every city, town and village in the state of Wyoming, containing not less than one hundred inhabitants, and at an elevation above the sea level of not more than fifty-five hundred feet, shall be eligible as a seat for said Agricultural College."

38 "SEC. 19. Any city, town or village eligible as aforesaid may be nominated as a candidate for the seat of said Agricultural College in the manner provided by the law for the nomination of candidates of public offices, to be filled by the electors of the entire state and a certificate of such nomination shall be filed with the Secretary of State in the manner and at the time provided by law for certificates of nomination of candidates for offices to be filed by electors of the entire state at the regular election to be held in November in the year one thousand eight hundred and ninety-two."

"SEC. 20. The secretary of the State shall certify to the County Clerk of each county at the time and in the manner required in the case of candidates for offices to be filled by the electors of the entire state at the regular election to be held in November in the year one thousand, eight hundred and ninety-two, a list of all cities, towns and villages nominated as candidates for the seat of said Agricultural College."

"SEC. 21. The County Clerk of each County shall cause to be printed in the official ballots provided for the general election in November, one thousand eight hundred and ninety-two, in the manner provided for the printing of the names of candidates for public offices, the names of each city, town or village nominated as a candidate for the seat of said Agricultural College as certified by the secretary of State, ans shall also cause to be printed on such ballot, opposite the names of the candidate for the seat of the said agricultural college, the words, "vote for one" and at the head of the list of the names of the said candidates the words, "for seat of the Wyoming agricultural College."

"SEC. 22. Each voter shall designate on his ballot at the election aforesaid the name of the City, town or village for which he intends to vote as the seat of the said agricultural college, in the same manner provided by law, for the designation upon such ballot of the names of candidates for public offices, for whom he intends to vote."

"SEC. 23. The votes, so far as relates to the location of said agricultural college shall be canvassed and certified in all respects as is provided by law for the canvassing and certification of the votes for candidates for public offices voted for by the electors of the entire state."

"SEC. 24. The city, town or village receiving the highest vote as the seat of said agricultural college shall be the permanent seat at or near which the same shall be located; Provided, however, That any and all votes that may be cast for any city, town or village not

eligible, as aforesaid, shall not be counted in determining the seat of said agricultural college."

"SEC. 25. This act shall take effect and be in force from and after its passage." Approved January, 10, 1891."

Seventh. Your petitioners further allege that at the general election held in Wyoming on the Tuesday next after the first Monday in November, in the year one thousand eight hundred and ninety-two, the location of said The Wyoming Agricultural College was duly submitted to a vote of the people of the State of Wyoming; that said election was conducted in all respects in conformity with law; That among other candidates for the permanent location of The Wyoming Agricultural College, the town of Lander, situated
39 in the County of Fremont in the State of Wyoming, being in all respects elegible under said act providing for the establishment of The Wyoming Agricultural College, was duly nominated as a candidate for the seat of said The Wyoming Agricultural College in the manner provided by the law for the nomination of candidates for public offices, to be filled by the electors of the entire state, and a certificate of such nomination of said town of Lander was duly filed with the Secretary of State in the manner and at the time provided by law for certificates of nomination of candidates for offices to be filed by the electors of the entire state at the regular election to be held in November in the year one thousand eight hundred and ninety-two; that at said election the town of Lander aforesaid, received the highest vote as the seat of said The Wyoming Agricultural College and thereupon became and now is the permanent seat of said The Wyoming Agricultural College.

Eighth. Your petitioners further allege that soon after the election as aforesaid by the people of the said town of Lander as the permanent location of the said The Wyoming Agricultural College, the then governor of the State of Wyoming, by and with the advice and consent of the senate, duly appointed trustees for the said The Wyoming Agricultural College and said board of trustees thus appointed duly elected one of its members president of said board and duly appointed a secretary and treasurer of said board from among the members of said board and from thence hitherto said The Wyoming Agricultural College has maintained its said organization, and new trustees of said institution have from time to time been duly appointed as required by law and who have duly qualified and acted as such trustees and are still acting as such trustees.

Ninth. Your petitioners further allege that on to-wit, the seventeenth day of June, A. D. 1903, one Phillip Wisser, a resident of the County of Fremont and State of Wyoming, departed this life, leaving a last will and testament devising and bequeathing all of his property, real and personal, after the payment of his
40 debts, funeral expenses and costs of a monument, to The Wyoming Agricultural College located at the said town of Lander, "to be there expended and used for the benefit and erection of said institution."

That on the 17th day of December, A. D. 1904, being one of the regular days of the December, A. D. 1904, Term of the District

Court of the Second Judicial District within and for the County of Fremont and State of Wyoming, a final decree of settlement of account and final distribution was entered by said Court in the matter of the said estate of Philip Wisser, deceased, decreeing that all the residue of said estate in the hands of the executors and all property now known or which may hereafter — found in which the said estate may have an interest, be distributed to Matt Borland, A. D. Lane, Carrie B. Meyer Amelia S. Hall and William E. Hardin in trust for The Wyoming Agricultural College which is located at Lander in the County of Fremont and State of Wyoming, to be expended by such trustees and their successors in office for the benefit of The Wyoming Agricultural College at Lander in the County and State aforesaid according to the terms of said will and designating and describing the property and estate to be so distributed as follows; to-wit: "Seventeen thousand three hundred forty-one and 88/100 dollars; the southeast quarter of the southwest quarter, the northeast quarter of the southwest quarter and lots numbered three and four of section eighteen in township thirty-one, north of range ninety-eight west of the sixth principal merid-an in Wyoming, containing one hundred and sixty-eight acres and 65/100 acres according to government survey.

The southwest quarter of the northeast quarter, the southeast quarter of the northwest quarter and lot numbered two of section one in township thirty-one north of range ninety-four west of the sixth principal merid-an in Wyoming containing one hundred and twenty acres more or less according to government survey.

The southwest quarter of the southwest quarter of section eleven and the northwest quarter of the northwest quarter of section fourteen township thirty-three north of range ninety-three west of the sixth principal merid-an in Wyoming.

The north half of the southeast quarter of section nineteen in township thirty-two north of range ninety-three west of the sixth principal merid-an in Wyoming.

The south east quarter of the northwest quarter of section fourteen in township thirty-two north of range ninety-three west of the sixth principal merid-an in Wyoming.

The north west quarter of the south west quarter of section twenty-nine township thirty-two, north of range ninety-three west of the sixth principal merid-an in Wyoming."

That the total value of said real and personal property so
41 decreed to the trustees of The Wyoming Agricultural College of Wyoming is to-wit, the sum of twenty-five thousand dollars; that under and by virtue of said last will and testament of Philip Wisser, deceased and said decree the said trustees of the said The Wyoming Agricultural College are now vested with all the right, title and interest of Phillip Wisser, deceased, in and to said real and personal estate; that after the receipt of seventeen thousand three hundred forty-one and 88/100 dollars from said estate, as aforesaid, by said trustees, said trustees did on to-wit, the 30th day of January, A. D. 1905, expend Nine thousand dollars of said moneys derived from the Wisser estate, as aforesaid, in the purchase

of a suitable site for said The Wyoming Agricultural College and an Agricultural Experiment station in connection therewith, said site consisting of one hundred and sixty acres of land situated at and within the corporate limits of said town of Lander, known and described as follows, to-wit,

"The south east quarter of section twelve, township thirty-three, north, range one hundred west of the sixth principal merid-an, in the County of Fremont and State of Wyoming, and said trustees then and there designated and named said site, the site and location of and for The Wyoming Agricultural College and Agricultural Experimental Station in connection therewith; that said trustees of The Wyoming Agricultural College now hold the title to all of said last named real estate upon the trust aforesaid for the use and benefit of The Wyoming Agricultural College; that after the purchase by said trustees as aforesaid, of said site and location of The Wyoming Agricultural College and Agricultural Experiment Station in connection therewith, said trustees on, to-wit, the thirty-first day of January, A. D. 1905, duly met at the town of Lander aforesaid and by resolution of their said board duly made, seconded and carried provided that the school year of said college should consist of three terms of three months each, the first term to commence February 1st, 1905, the second term May 1st, 1905, and the third term August
42 1st, 1905, and further provided that said college should open for the enrollment of pupils and for their instruction on February 1st, 1905, at the place theretofore designated as The Wyoming Agricultural College and further provided for and appointed and hired professors of instruction in English, History, Civil Government, Mathematics, agriculture, Horticulture and Irrifation; and also further provided and adopted rules, regulations and a course of study to be used by the faculty of said institution; that on said 1st day of February A. D. 1905, the Wyoming Agricultural College was duly opened at said site and at the place designated as the place of instruction and pupils were then and there enrolled and instructed and taught by said professors of said institution; that on the second day of February A. D. 1905, the said trustees of said institution duly met and by resolutions duly made, seconded and carried appointed and elected a faculty and president thereof for said institution and a station staff for the Agricultural Experiment Station in connection with said institution and provided for and fixed the salaries of said president and faculty and the members of said station staff.

Tenth. Your petitioners further allege that The Wyoming Agricultural College since its location by the vote of the people of Wyoming in eighteen hundred ninety-two to the present time has never received any appropriations, donations or other support from the legislature of the State of Wyoming or from any other source save from the estate of Phillip Wisser, deceased, as aforesaid.

Eleventh. And your petitioners further allege that since the enactment of the said "Morrill and Hatch" laws respectively, all appropriations under said laws to the State of Wyoming have been paid to and used by the University of Wyoming; that the University

of Wyoming is not now and never has been eligible to accept or receive nor is it the proper institution to receive the appropriations under the "Morrill and Hatch" laws and your petitioners allege that the payments of said appropriations to it as aforesaid have each and all been in direct violation of the letter and spirit of said laws
43 which expressly provides that the donations thereunder shall be inviolably appropriated *to colleges whose leading object shall be* without excluding other scientific and classical studies and including military tactics, *to teach such branches of learning as are related to agriculture and mechanic arts;* that the leading object of the University of Wyoming is not now and never has been to teach such branches of learning as are related to agriculture and mechanic arts; that the very character of said University defining its objects negatives all such pretentions; that during the past nine or ten years said University has accepted and received from the United States government appropriations under said "Morrill and Hatch" laws aggregating five hundred and fifty-five thousand dollars, and during all of said time, has graduated but two students from its department of agriculture and mechanic arts; but has each year graduated large numbers of students from its other departments; that said University is situated in the city of Laramie, which has an altitude of seven thousand two hundred feet above sea level; that the successful maintenance and operation of an agricultural college or agricultural experiment station at said altitude is absolutely impossible; that only the hardiest native grasses and trees can be there grown, and these only by the expenditures of an amount of care, irrigation, labor and attention which renders results obtained wholly incommensurate and futile; that section 499 of the Revised Statutes of Wyoming under the chapter establishing said University provides, "*That until such time as there may be an agriculture college established in this state separate and apart from said University of Wyoming, assent is given to all terms and conditions of the Morrill law* thereby showing a clear legislative intent that when a separate agricultural college shall be established in this state, such separate college should be and become the rightful recipient of the appropriations under such federal laws; that the principal object of the University of Wyoming now is and always has been instruction in musical, classical and literary courses; the department of music comprising a seven
44 years' course; that said University since its organization to the present time has subsisted almost exclusively from funds derived from the government under the "Morrill and Hatch" laws; that the only other revenue which it now receives or ever has received to pay operating expenses is about three thousand dollars annually from the rental of lands granted by the state of Wyoming and about nine thousand dollars annually from the state of Wyoming being one-fourth of a mill tax levy on the assessed property valuation of the state.

Twelve. Your petitioners fu-ther allege that the present location of The Wyoming Agricultural College at the said town of Lander is admirably adapted for the maintenance, support and operation of said institution; that said location is in the heart of a rich, pros-

perous agricultural region at an altitude of fifty-three hundred feet above sea level; that all kinds and varieties of trees, shrubs, fruits, vegetables, grasses and flowers indigenous to temperate climates may be cultivated and grown in said region with little care, labor and attention; that the Northwestern railway company will construct a branch of its railroad system from the town of Casper in Natrona County, Wyoming, to the said town of Lander during the year 1906, so that said town within a short time will possess direct railroad communications with other sections of the state, and that said town of Lander is situated near the geographical center of the state; and the said agricultural region surounding the same is abundantly supplied with pure water and possesses a uniform and healthful climate admirably adapted not only for agricultural purposes but also conducive to the health, comfort and enjoyment of students.

Thirteen. Your petitioners fu-ther allege that the said The Wyoming Agricultural College situated as aforesaid at the said town of Lander is legally and lawfully entitled to receive all appropriations present or future under said "Morrill and Hatch" laws and is the only college or institution in this state legally or lawfully entitled to receive the same.

45 Fourteen. Your petitioners fu-ther allege that the act of the legislature of the state of Wyoming of eighteen hundred and ninety-one, aforesaid, providing for the establishment of The Wyoming Agricultural College was incorporated in the revised statutes of Wyoming of 1899 under section five hundred four to five hundred and twenty-two inclusive of said statutes, save that portion of said act of eighteen hundred and ninety-one which provides for the location of said The Wyoming Agricultural College by a vote of the people which had fulfilled its purpose, but that section 2714 of said revised statutes of 1899 expressly provides that all acts and statutes relating to public institutions of the state shall not be construed as repealed by anything in said revised statutes contained and section 2713 of said statutes fu-ther provides that nothing therein contained shall effect any act done under previous laws not incorporated in said revised statutes.

Fifteeen. Your petitioners fu-ther allege that on, to-wit, the seventh day of February, A. D. 1905, the legislature of the state of Wyoming passed a pretended act attempting to repeal the said act providing for the establishment of The Wyoming Agricultural College; that said pretended repealing act is unconstitutional, null and void, and of no force or effect whatever; that the said The Wyoming Agricultural College is a creature of the people and not of said legislature; that it was the said act of the people of the state at the polls locating said college which invested with all its life, force and vitality; that said college possessed no legal existance whatever until the people in their sovereign capacity as aforesaid located said institution and thereby endowed it with an actual, active and legal existence; that said legislature by their said repealing act of 1905 attempted to thwart and undo the said will of the people of said state as expressed in their said Constitution and by their said vote and to tear down and abolish that which they had no power to

create and to change the location of said College to Laramie City,
Wyoming; that the said act of the legislature of the State of
46 Wyoming providing for the establishment of The Wyoming
Agricultural College expressly provides that the trustees of said institution shall have the power to take and hold for the use and benefit of said The Wyoming Agricultural College any real and personal estate and to dispose of the same in such manner as they may deem most conducive to the interests of said The Wyoming Agricultural College and to expend any and all income that may be placed under the control of such trustees by donations, or by law or otherwise, in such manner as shall best promote the interests and prosperity of the said institution and that in the management and application of any property real or personal granted, devised or bequeathed for the use of said The Wyoming Agricultural College or the proceeds thereof, the trustees shall conform to the will and direction of the donor thereof, if any such directions shall have been connected with such grant, devise, bequest or donation, thereby investing said institution in said particulars with powers strictly of a private character and holding out a guaranty of good faith and inviolability to all those whom local pride or interest might prompt to part with valuable property rights for the benefit of said institotion, thereby creating—especially after private donations have been specifically made as aforesaid to said institution as located, on the faith of said charter with express directions as to how such donations should be expended—a binding contract between the state on the one hand and said institution and said donors on the other, based upon a valuable consideration; a contract on the faith of which real and personal property has been donated to said institution as aforesaid and that therefore by reason of the premises said pretended repealing act of 1905 is unconstitutional and void as being in contravention of section thirty-six of Article One of the Constitution of the State of Wyoming, which provides no *ex post facto* law or any law impairing the obligations of contract shall ever be made and also in contravention of the constitution of the United States which by section ten
of article one of said constitution provides that no state shall
47 pass any bill of attainder or *ex post facto* law or law impairing the obligation of contracts; that said pretended repealing act of 1905 is in contravention of section eight of said "Hatch Law" which provides that no legislature shall by contract express or implied disable itself from applying in whole or in part the appropriations therein granted to any separate agricultural college or school which has been established or may hereafter be established in such state.

Sixteen. Your petitioners further allege that the defendant, William C. Irvine, as Treasurer of the State of Wyoming, now has in his possession the sum of to-wit, Twenty-five thousand dollars derived from the government of the United States for the year 1905 under the provisions of said "Morrill laws to which sum The Wyoming Agricultural College at Lander is legally, equitably and justly entitled; that said The Wyoming Agricultural College requires said amount in the maintenance and support of its department of in-

struction in agriculture and mechanic arts; that said treasurer of the said State of Wyoming refuses to recognize the right of said The Wyoming Agricultural College to the said fund but claims and asserts that said fund belongs to said The University of Wyoming, and in pursuance of said claims and assertions and in violation of said Morrill and Hatch laws and the rights of said The Wyoming Agricultural College refuses to pay said fund to said College and will shortly pay over to said University all of said funds unless otherwise directed by this honorable Court; that the said respondent, the treasurer of the State of Wyoming has now in his possession or loaned under his direction permanent funds amounting to, to-wit, $20,415.34, derived from sales of land and land script from the general government under said "Morrill law," which said funds are known and designated by said treasurer as the agricultural college permanent fund of 1903 and The Agricultural College Permanent Land Fund; that said The Wyoming Agricultural College is lawfully and legally entitled to all interest upon said funds; that said treasurer of the state of Wyoming refuses to recognize the right of said The Wyoming Agricultural College to receive the inter-
48 est on said funds, but claims and asserts that said interest on said funds belongs to said, The University of Wyoming, and in pursuance of said claims and assertions refuses to pay to said College or the trustees or treasurer thereof said interest — will pay over to said University all installments of interest which may hereafter become due and payable upon said funds which said refusal to pay is and said payments will be in violation of said "Morrill and Hatch" laws and the rights of said The Wyoming Agricultural College.

Seventeen. Your petitioners further represent that said respondent, the treasurer of the State of Wyoming, will in the future receive from the government of the United States, under said "Morril law" the annual appropriation of twenty-five thousand dollars as the same become- due and *are* paid by the Secretary of the Treasury upon the warrant of the Secretary of the Interior to him and will unless otherwise directed by this honorable Court wrongfully and illegally and in violation of said "Morrill and Hatch laws" and the rights of said The Wyoming Agricultural College turn over to said University of Wyoming each and all of said future appropriations.

Eighteen. Your petitioners further represent that said respondent, William C. Irvine, as treasurer of the State of Wyoming, now has in his possession or control or loaned by him certain funds derived from the United States government under said "Hatch Law," to which said funds and all interest thereon the said The Wyoming Agricultural College is rightfully, legally and equitably entitled for the maintenance and support of said agricultural experimental station in connection with said college, but that said treasurer denies the right of said college to said funds and the interest thereon and wrongfully asserts and claims that he holds the same for the use and benefit of said University of Wyoming, and unless otherwise directed by this honorable Court will pay all of said funds, together with the interest thereon, to said University, which said payments

will be in violation o- said "Morrill and Hatch" laws and the rights of said The Wyoming Agricultural College.

49 Nineteen. Your petitioners further represent that said respondent, the treasurer of the state of Wyoming, now holds said annual appropriation of Twenty-five Thousand Dollars, and also said funds and the interest thereon derived as aforesaid under said "Hatch Law" in trust to pay the same to said trustees of the said Wyoming Agricultural College at Lander and also holds said permanent funds of, to-wit, $20,415.34, in trust to apply the interest derived therefrom to the trustees of said The Wyoming Agricultural College, but that said Treasurer neglects and refuses to recognize said trust, but wrongfully claims and asserts that he holds all of said funds for the use and benefit of the University of Wyoming.

Twenty. Your petitioners further represent that on to-wit, the fifth day of February, A. D. 1905, the trustees of The Wyoming Agricultural College under and in pursuance of a resolution of their said board passed on the first day of February, A. D. 1905, personally served upon said treasurer of Wyoming a demand in writing requesting and ordering that said treasurer *to* turn over to the trustees of The Wyoming Agricultural College or the treasurer thereof all sums of money and appropriations then in his possession or control or which might thereafter come to his possession for the use and benefit of said The Wyoming Agricultural College from the United States Goverment under said "Morrill and Hatch" laws, but that said treasurer has wholly disregarded said order and demand, and refuses to turn over said funds or any portion thereof to said trustees or treasurer.

Twenty-one. Your petitioners further allege that on to-wit, the 8th day of July, A. D. 1905, the trustees of said The Wyoming Agricultural College, at a regular adjourned meeting of said board duly called for that purpose, by resolution duly made, seconded and carried, duly retained and employed the law firm of Chatterton, Preston and Coolidge of Lander, Wyoming, to institute all suits and proceedings in the State or Federal Courts on behalf of said

50 The Wyoming Agricultural College and the trustees thereof which may be necessary or expedient in and about the recovery by said The Wyoming Agricultural College and the trustees thereof of all appropriations under the "Morrill Law" now in the hands of the treasurer of Wyoming or which may hereafter come into his possession, and all other suits necessary or expedient to protect the legal existance and rights of said The Wyoming Agricultural College including the recovery of all appropriations due or to become due under the "Hatch Law," and Matt Borland, President of said board, was duly authorized and empowered to sign and verify on behalf of said The Wyoming Agricultural College and the trustees thereof all petitions or pleadings which may be required to be signed and verified in the prosecution of any such suits or proceedings.

Twenty-two. Your petitioners further represent that it has no legal redress or remedy in the premises except through the writ of mandamus.

Twenty-three. Your petitioners further allege that said Matt Borland, A. D. Lane, Carrie B. Meyer, Amelia S. Hall and William E. Hardin are now the duly and legally appointed, qualified and acting trustees of said The Wyoming Agricultural College, and said Carrie B. Meyer of the town of Lander, County of Fremont and State of Wyoming, is a member of the said board of trustees of The Wyoming Agricultural College and is duly appointed, qualified and acting treasurer thereof.

Wherefore, your petitioners pray your honors to grant a writ of mandamus, under the seal of this Court, directed to the respondent, William C. Irvine, as treasurer of the State of Wyoming, commanding him:

First. To pay to Carrie B. Meyer, treasurer of the Wyoming Agricultural College at Lander, Wyoming, the appropriation of twenty-five thousand dollars, lately received by him from the United States Treasury under the "Morrill Law" being the annual Appropriation for The Wyoming Agricultural College for the year 1905.

Second. To pay to the said treasurer of said The Wyoming Agricultural College at Lander, Wyoming, or to such treasurer of
51 said college as may hereafter be appointed, all future annual appropriations received by him under said "Morrill Laws."

Third. To pay to said treasurer of said The Wyoming Agricultural College at Lander, Wyoming, all installments of interests now due and payable or which may hereafter become due and payable on the permanent funds aforesaid, received and loaned by him under said "Morrill Laws."

Fourth. To pay to said treasurer of said The Wyoming Agricultural College at Lander, Wyoming, all funds, together with the interest thereon, now in his possession or control derived as aforesaid from the United States Government under said "Hatch Law."

Fifth. And your petitioners further pray for such other and further relief in the premises as justice and equity may require, and to your honors shall seem meet.

THE WYOMING AGRICULTURAL COLLEGE,
By MATT BORLAND, *President.*
MATT BORLAND,
A. D. LANE,
CARRIE B. MEYER,
AMELIA S. HALL,
WILLIAM E. HARDIN,
Trustees of Wyoming Agricultural College, Relators.

CHATTERTON, PRESTON & COOLIDGE,
Attorneys for Relators.

52 THE STATE OF WYOMING, *County of Fremont, ss:*

Matt Borland being first duly sworn on his oath deposes and says, that he is a member of the board of trustees of said The Wyoming Agricultural College and the duly elected, qualified and acting presi-

dent thereof and the duly authorized and empowered agent of said college and of said trustees and as such authorized agent, officer and trustee makes this affidavit for and on behalf of himself, said college and said trustees; that he has read the above and foregoing petition, and knows the contents thereof and that the matters and facts therein stated are true.

MATT BORLAND.

Subscribed in my presence and sworn to before me this 19th day of July, A. D. 1905.

My commission expires, April 22, 1908.

RALPH KIMBALL,
Notary Public.

[NOTARIAL SEAL.]

53 The foregoing Petition *of* Mandamus is endorsed by the clerk, as follows: "Docket 2. No. 486. In the Supreme Court of Wyoming. The State of Wyoming, *ex rel.* Wyoming Agricultural College, Matt Borland, A. D. Lane, Carrie B. Meyer, Amelia S. Hall and William E. Hardin, as Trustees of the Wyoming Agricultural College, *vs.* William C. Irvine, as Treasurer of the State of Wyoming. Petition *of* Mandamus. Supreme Court, Wyoming. Filed Jul. 24, 1905. Wm. H. Kelly, Clerk. Chatterton, Preston and Coolidge, Attorneys for Relators."

54 In the Supreme Court of the State of Wyoming.

THE STATE OF WYOMING on Relation of THE WYOMING AGRICULTURAL COLLEGE and MATT BORLAND, A. D. LANE, CARRIE B. MEYER, AMELIA S. HALL and WILLIAM E. HARDIN, as Trustees of The Wyoming Agricultural College, Plaintiff-,

vs.

WILLIAM C. IRVINE, as Treasurer of the State of Wyoming, Defendant.

Order.

Now came the Plaintiff-, the State on the relation of The Wyoming Agricultural College, *et al.*, and presented a petition for mandamus against William C. Irvine, as Treasurer of the State of Wyoming, and thereupon it is ordered that an alternative writ of mandamus returnable into this Court, on the 28th day of August, A. D. 1905, be issued to the said William C. Irvine as Treasurer of the State of Wyoming, commanding him:

First: That he pay to Carrie B. Meyer, Treasurer of The Wyoming Agricultural College, at Lander, the appropriation of twenty-five thousand Dollars lately received by him from the United States Treasury, under the Morrill Law, being the annual appropriation for The Wyoming Agricultural College for the year 1905;

Second: That he pay to the said Treasurer of said The Wyoming Agricultural College, at Lander, or to such Treasurer of said College

as may hereafter be appointed, all future annual appropriations received by him under said Morrill Law;

Third: That he pay to said Treasurer of said The Wyoming Agricultural College, at Lander, all instalments of interest now
55 due and payable, or which may hereafter become due and payable, on the permanent funds in plaintiffs' petition mentioned, received and loaned by him under said Morrill Law;

Fourth: That he pay to said Treasurer of said The Wyoming Agricultural College, at Lander, all funds, together with interest thereon, now in his possession or control, derived as in plaintiffs' petition mentioned, from the United States Government, under said Hatch Law;

Or, that the said William C. Irvine, as Treasurer as aforesaid, on the said 28th day of August, A. D. 1905, show cause why he has not done so.

Dated this twenty-fourth day of July, A. D. 1905.

CHARLES N. POTTER,
Chief Justice.

56 The following order bears the endorsement of the clerk, as follows:

"Doc. 2. No. 486. Supreme Court of Wyoming. The State of Wyoming, *ex rel.*, The Wyoming Agricultural College, *et al.* Plaintiffs *vs.* William C. Irvine, as State Treasurer, Defendant. Filed Jul. 24, 1905. Wm. H. Kelly, Clerk. Order for Alt. Writ."

57–82 The State of Wyoming, in the Supreme Court.

THE STATE OF WYOMING on Relation of the WYOMING AGRICULTURAL COLLEGE and MATT BORLAND, A. D. LANE, CARRIE B. MEYER, AMELIA S. HALL and WILLIAM E. HARDIN, as Trustees of the Wyoming Agricultural College, Plaintiff,

vs.

WILLIAM C. IRVINE, as Treasurer of the State of Wyoming, Defendant.

Alternative Writ of Mandamus.

The State of Wyoming to the Sheriff of the County of Laramie in said State, Greeting:

You are hereby commanded to serve William C. Irvine, the Treasurer of the State of Wyoming, with a copy of the following writ, and make due return of said writ and your action in the premises to this Court on the 28th day of August, A. D. 1905, to-wit:

To William C. Irvine as Treasurer of the State of Wyoming:

Whereas, the following petition and the order of the allowance of an alternative writ of mandamus have been filed in and made by the said Supreme Court of the State of Wyoming, to-wit:

("Attached to and made a part of this writ is a copy of the petition for mandamus, set out on side pages 28 to 53 incl. of this record, also copy of order allowing said writ, set out on side pages 54 to 56 incl. of this record.")

83 Now, therefore, we being willing that full and speedy justice should be done in the premises, do command you as such Treasurer without delay:

First: That you pay to Carrie B. Meyer, Treasurer of The Wyoming Agricultural College, at Lander, the appropriation of twenty-five thousand dollars lately received by you from the United States Treasury, under the Morrill Law, being the annual appropriation for The Wyoming Agricultural College for the year 1905;

Second: That you pay to the said Treasurer of said The Wyoming Agricultural College, at Lander, or to such Treasurer of said College as may hereafter be appointed, all future annual appropriations received by you under said Morrill Law;

Third: That you pay to said Treasurer of said The Wyoming Agricultural College, at Lander, all instalments of interest now due and payable, or which may hereafter become due and payable, on the permanent funds in plaintiff's petition mentioned, received and loaned by you under said Morrill Law;

Fourth: That you pay to said Treasurer of said The Wyoming Agricultural College, at Lander, all funds, together with interest thereon, now in your possession or control, derived as in plaintiff's petition mentioned, from the United States Government, under said Hatch Law;

Or, that as such Treasurer you do on the 28th day of August, A. D. 1905, appear before the said Supreme Court sitting within and for said State, at the State House in the City of Cheyenne, in the County of Laramie, in said state, at the hour of ten o'clock A. M, of said day, to show cause why you refuse to do so.

Witness the Honorable Charles N. Potter, Chief Justice of said Supreme Court, and the seal thereof, at Cheyenne, this 24th day of July, A. D. 1905.

[SEAL.] (Signed) WILLIAM H. KELLY,
Clerk of the Supreme Court
of the State of Wyoming.

84 The foregoing Alternative Writ of Mandamus is endorsed by the Clerk as follows:

"Docket 2. No. 486. State *ex rel.* Wyo. Agri. College, *et al. vs.* Wm. C. Irvine, Treasurer, Alternative Writ. Supreme Court of Wyoming. Filed August 12, 1905. William H. Kelly, Clerk."

85 In the Supreme Court of the State of Wyoming.

THE STATE OF WYOMING on Relation of the WYOMING AGRICULTURAL COLLEGE and MATT BORLAND, A. D. LANE, CARRIE B. MEYER, AMELIA S. HALL and WILLIAM E. HARDIN, as Trustees of the Wyoming Agricultural College, Plaintiff,

vs.

WILLIAM C. IRVINE, as Treasurer of the State of Wyoming, Defendant.

Demurrer.

Comes now said defendant and demurs to the petition in said cause, and for grounds of demurrer says:

1. That said petition does not state facts sufficient to constitute a cause of action in favor of the plaintiff against the defendant.

2. That the said plaintiff Wyoming Agricultural College, is without legal capacity to sue.

3. That Matt Borland, A. D. Lane, Carrie B. Meyer, Amelia S. Hall and William E. Hardin, as Trustees of the Wyoming Agricultural College, are without legal capacity to sue.

W. E. MULLEN, *Att'y Gen'l,*
N. E. CORTHELL,
T. F. BURKE,
C. W. BURDICK AND
JOHN W. LACEY,
Attorneys for Defendant.

86 The foregoing demurrer bears the following endorsement of the clerk, as follows: "Doc. 2. No. 486. Supreme Court of Wyoming. The State of Wyoming, on relation of The Wyoming Agricultural College, *et al.*, Plaintiff *vs.* William C. Irvine, as Treasurer of the State of Wyoming, Defendant. Demurrer. Filed Oct. 11, 1905. William H. Kelly, Clerk."

87 In the Supreme Court, State of Wyoming, October Term, A. D. 1905.

JANUARY 31, 1906.

Doc. 2, 486.

THE STATE OF WYOMING *ex Relatione* THE WYOMING AGRICULTURAL COLLEGE and MATT BORLAND, A. D. LANE, CARRIE B. MEYER, AMELIA S. HALL and WILLIAM E. HARDIN, as Trustees of The Wyoming Agricultural College, Plaintiff,

vs.

WILLIAM C. IRVINE, as Treasurer of the State of Wyoming, Defendant.

Original Proceeding in Mandamus. Heard on Demurrer to Petition and Writ.

Chatterton, Preston & Coolidge, and S. T. Corn, for plaintiff.

William E. Mullen, Attorney General, John W. Lacey, N. E. Corthell, C. W. Burdick and T. F. Burke, for defendant.

88 POTTER, *Chief Justice:*

This is a proceeding in mandamus commenced in this court in the name of the State, on the relation of the Wyoming Agricultural College, and Matt Borland and others as trustees of said college, against William C. Irvine, as State Treasurer. The object of the suit is to require the State Treasurer to pay to the Treasurer of said College, located at Lander, Wyoming, certain funds, alleged to be in the hands of said State Treasurer and to have been received for the benefit of said college.

An alternative writ of mandamus was issued in accordance with the prayer of the petition, and the cause has been heard upon a demurrer filed on behalf of the respondent. The demurrer states three grounds, viz: (1) That the petition does not state facts sufficient to constitute a cause of action in favor of the plaintiff against the defendant. (2) That the Wyoming Agricultural College is without legal capacity to sue. (3) That the other relators, as trustees of the Wyoming Agricultural College, are without legal capacity to sue.

The constitution declares that the Supreme Court shall have original jurisdiction in *quo warranto* and mandamus as to all state officers. (Art. 5, Sec. 3.) By statute, mandamus is defined as a writ issued in the name of the state to an inferior tribunal, a corporation, board or person commanding the performance of an act which the law specially enjoins as a duty resulting from an office, trust or station. (R. S. 1899, Sec. 4194.)

The petition sets out the following acts of Congress: First, the Act of July 2, 1862, granting certain lands or land scrip to the several states, and providing that the proceeds thereof shall be invested to constitute a perpetual fund, and the interest inviolably appropriated by each state taking or claiming the benefit of the act "to the endowment, support, and maintenance of at least one college where

the leading object shall be without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts, in such manner as the legislatures of the states may respectively prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and
89 professions in life." (12 Stat. L. 503-505; 22 Stat. L. 484; 2 Fed. Stat. Ann. pp. 850-853.) Second, the act of August 30, 1890, providing that there shall be appropriated, out of any money arising from the sales of public lands, to each state and territory "for the more complete endowment and maintenance of colleges for the benefit of agriculture and the mechanic arts" then established or which might be thereafter established, "in accordance with an act of Congress approved July second, eighteen hundred and sixty-two, the sum of fifteen thousand dollars for the year ending June thirtieth, eighteen hundred and ninety, and an annual increase of the amount of such appropriation thereafter for ten years by an additional sum of one thousand dollars over the preceding year, and the annual amount to be paid thereafter to each state and territory shall be twenty-five thousand dollars to be applied only to instruction in agriculture, the mechanic arts, the English language and the various branches of mathematics, physical, natural and economic science, with special reference to their applications in the industries of life, and to the facilities for such instruction." (26 Stat. L. 417; 2 Fed. Stat. Ann. 854-857.) Third, the act of March 2, 1887, entitled "An act to establish agricultural experiment stations in connection with the colleges established in the several states under the provisions of an act approved July second, eighteen hundred and sixty-two, and of the acts supplementary thereto." (24 Stat. L. 440; 1 Fed. Stat. Ann. 9.)

The petition then proceeds to allege the establishment of the relator, the Wyoming Agricultural College, by an act of the State Legislature approved January 10, 1891; the location of the college at the town of Lander, Fremont County, by a vote of the people, to whom the question of location had been submitted as provided in said act, at the general election held in 1892; the appointment soon thereafter of trustees for said College, by the Governor, by and with the advice and consent of the Senate, as required by said act; the organization of the board of trustees by the election of a president, secretary and treasurer thereof; the appointment of new trustees from time to time as required by law, and that such trustees duly appointed have qualified and are acting as such. Then follows certain allegations in substance as follows: that on June 17, 1903, one Phillip
90 Wisser, a resident of Fremont county, in this state, departed this life, having by his last will and testament devised and bequeathed to the said Wyoming Agricultural College, located at the town of Lander, all his property, both real and personal, after the payment of debts etc., which property was, upon the settlement of the estate of said decedent by the District Court in and for Fremont county, on December 17, 1904, distributed, in accordance with said will, to the persons then constituting the board of trustees of

said college "in trust for the Wyoming Agricultural College, which is located at Lander in the County of Fremont and State of Wyoming, to be expended by such trustees and their successors in office for the benefit of the Wyoming Agricultural College at Lander in the County of Fremont and State aforesaid, according to the terms of said last will;" that said estate so distributed consisted of $17341.88 in money, and certain real estate, described in the petition; that after receiving the money coming to them from said estate as aforesaid, the trustees of the College, on January 30, 1905, expended nine thousand dollars thereof in the purchase of a site for the College, and an agricultural experiment station, at and within the corporate limits of said town of Lander, said site consisting of one hundred and sixty acres of land; that the site was then and there designated by said trustees as the site and location of and for the Wyoming Agricultural College and Experiment Station in connection therewith; and that "said trustees of the Wyoming Agricultural College now hold the title to all of said last named real estate upon the trust aforesaid for the use and benefit of the Wyoming Agricultural College."

It is alleged that after the purchase of the site aforesaid, and on January 31, 1905, the trustees of such college duly convened at Lander and adopted resolutions providing for opening said college, and thereby determined that the school year of the college should consist of three terms of three months each, the first three terms to commence respectively February 1, May 1, and August 1, 1905; that pursuant to such resolution, the college was opened for the enrollment and instruction of pupils on the site aforesaid, February 1, 1905, the board having at its meeting on the preceding day appointed and hired "professors of instruction in English, History, Civil Government, Mathematics, Agriculture, Horticulture
91 and Irrigation," and that on February 2, 1905, a president and faculty for the institution, and a staff for the Experiment Station, were appointed and elected.

It is further alleged that said college has never received any appropriations, donations or other support from the legislature, or from any other source, except from the estate of Phillip Wisser, as aforesaid. The relators allege that said college is entitled to receive the appropriations to the state under the acts of Congress aforesaid, and that it is the only institution in the state so entitled; that the same have heretofore been paid to the University of Wyoming, which is located at Laramie, but that said University is not entitled to receive the present or future appropriations from that source.

The passage of an act by the legislature, approved February 7, 1905, is then averred, which purports to repeal the act of January 10, 1891, and all laws establishing the relator college, and said repealing act is alleged to be unconstitutional, null and void for the reason, (1) That it impairs the obligation of a contract, and (2) that it is an attempt to abolish an institution created by the people by their vote in locating it, pursuant to the act submitting the question of such location to them, and the constitutional requirement that all public institutions, other than those expressly located by the

constitution itself, shall be located only under general laws and by vote of the people.

The respondent is alleged to have in his possession the sum of twenty-five thousand dollars, derived from the United States for the year 1905, under the act of August 30, 1890, aforesaid, to which sum it is alleged the relator college is "legally, equitably and justly entitled;" that it requires said amount "in the maintenance and support of its department of instruction in agriculture and mechanic arts;" that the state treasurer refuses to recognize its right to such fund, but asserts that the sum belongs to the University of Wyoming, and will pay the same to said University, unless otherwise directed by this court. The respondent is also alleged to have in his possession, or loaned under his direction, permanent funds amounting to $20,415.34 derived from sales of land and land scrip under said acts of Congress which funds are known and designated as the "Agricultural College Permanent Fund of 1903," and "The Agricultural College Permanent Land Fund;" that the relator
92 college is legally entitled to all interest upon said funds, but the said respondent denies the relator's right thereto, and asserts that the same belongs to the said University, and will pay the same to said University, which it is alleged will be in violation of the said acts of Congress and the rights of the Wyoming Agricultural College.

The prayer of the petition is that a writ of mandamus issue commanding the respondent, as state treasurer, to pay to the treasurer of the relator College, (1) the said sum of $25,000, received from the United States as the 1905 appropriation under the act of August 30, 1890; (2) all future appropriations received by him under said act; (3) all installments of interest now or hereafter due and payable on the permanent funds aforesaid, received and loaned under the said acts of Congress of 1862 and 1890; and (4) all funds, together with interest thereon, now in respondent's possession, derived under the act of Congress of 1887 aforesaid. There is however no allegation that the respondent has received or has in his hands any funds under the said act of 1887, or that he has any duty whatever to perform as to those funds. The appropriations to the state under that act are not therefore involved in the case, and will not be specially considered.

The demurrer here is understood by counsel, correctly we think, to raise every question necessary to a determination of the right of the relators to the funds in controversy. As the petition is, in some particulars, argumentative, and contains a statement of some facts of at least doubtful materiality, and, in addition to allegations of fact, embraces a recital of certain acts of Congress and the state legislature, with allegations regarding the construction to be given those acts, it is proper to allude to the principle that, while a demurrer admits the truth of the material allegations of fact in the pleading demurred to, it does not admit arguments, legal conclusions or inferences not supported by the facts and circumstances therein set forth, nor the construction of statutes, nor facts that are immaterial or against common knowledge. (Ricketts *v.* Crewdson,

(Wyo.) 80 Pac. 1; 6 Ency. Pl. & Pr. 397; 13 *id.* 700.) We are not bound therefore by the construction placed by the petition upon the several legislative enactments involved, nor the conclusions therein alleged predicated upon the facts and the statutes aforesaid; but are at liberty and it is our duty to ascertain the proper con-
93 struction of such laws, and their effect upon the claimed right of the relators. It is admitted of course that the respondent, as state treasurer has in his hands the various funds as alleged in the petition, and that he claims to hold them for the State University, and refuses to pay them to the relators, or their treasurer. And it is likewise admitted that such funds were derived under the acts of Congress of 1862 and 1890 respectively. We are to inquire therefore whether upon the facts as controlled by the law governing the use of the funds in question the relators have shown themselves, or the College in whose behalf the suit is brought, to be entitled to them, and the relief prayed for. It should be added that a demand for the payment of the moneys to the treasurer of the relator college is alleged.

In 1886 the territorial legislature provided for a commission to procure a site at or near Laramie for a University building, and to erect such building, and authorized the issuance of the bonds of the Territory to obtain the money therefor. By the same act it was provided: "There shall be established in this Territory an institution under the name and style of 'The University of Wyoming,' to be located in or near the city of Laramie. * * * The objects of such University shall be to provide an efficient means of imparting to young men and young women, on equal terms, a liberal education and thorough knowledge of the different branches of literature, the arts and sciences, with their varied applications." (Rev. Stat. 1887, Secs. 3698, 3699.) The government of the institution through trustees to be appointed by the Governor, with the advice and consent of the Senate, was provided for, the powers of the trustees defined, and an annual tax upon all taxable property of the Territory was required to be levied to provide an income for the University. (*Id.* Secs. 3700-3716.)

The legislature of the Territory that convened in 1888 authorized an additional issue of territorial bonds to complete the University building, increased the rate of the annual tax for its support, and made an appropriation out of the funds then in the treasury for the same purpose. (L. 1888, pp. 62, 63.)

The Territory was admitted into the Union as a state July 10, 1890, under a constitution which had been framed in September, 1889, and had been submitted to and adopted by the people in November, 1889. That instrument contains the following material provisions:

94 "The legislature shall provide for the establishment and maintenance of a complete and uniform system of public instruction, embracing free elementary schools of every needed kind and grade, a university with such technical and professional departments as the public good may require and the means of the

state allow, *and such other institutions as may be necessary.*" (Art. VII, Sec. 1.)

"The establishment of the University of Wyoming is hereby confirmed, and said institution, with its several departments, is hereby declared to be the University of the State of Wyoming. All lands which have been heretofore granted or which may be granted hereafter by Congress unto the University as such, or in aid of the instruction to be given in any of its departments, with all other grants, donations, or devises for said University, or for any of its departments, shall vest in said University, and be exclusively used for the purposes for which they were granted, donated or devised. The said lands may be leased on terms approved by the land commissioners, but may not be sold on terms not approved by Congress." (Art. VII Sec. 15.)

"The University shall be equally open to students of both sexes, irrespective of race or color." (Sec. 16.) "The legislature shall provide by law for the management of the University, its lands and other property by a board of trustees, consisting of not less than seven members, to be appointed by the governor by and with the advice and consent of the Senate, and the president of the university, and the superintendent of public instruction, as members *ex-officio*, as such having the right to speak, but not to vote. The duties and powers of the trustees shall be prescribed by law." (Sec. 17.)

"The legislature shall have no power to change or to locate the seat of government, the state university, insane asylum, or state penitentiary, but may after the expiration of ten years after the adoption of this constitution, provide by law for submitting the question of the permanent locations thereof, respectively, to the qualified electors of the state, at some general election, and, until the same are respectively and permanently located, as herein provided, the location of the seat of government and said institutions shall be as follows: * * * The state university shall be located at the City of Laramie, in the county of Albany. * * * *The legislature shall not locate any other public institutions except under general laws, and by vote of the people.*" (Sec. 23.)

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At the first session of the state legislature the law relating to the objects of the University was amended so as to read as follows:

"The objects of such University shall be to provide an efficient means of imparting to young men and young women, without regard to color, on equal terms, a liberal education, together with a thorough knowledge of the various branches connected with the scientific, industrial and professional pursuits. To this end it shall embrace colleges or departments of letters, of science, and of the arts, together with such professional or other departments as in course of time may be connected therewith. The department of letters shall embrace a liberal course of instruction in language, literature and philosophy, together with such courses or parts of courses in the college or department of science as are deemed necessary. The college or department of science shall embrace courses of instruction in the mathematical, physical and natural sciences, together with such courses in language, literature and philosophy as shall consti-

tute a liberal education. The college or department of the arts shall embrace courses of instruction in the practical and fine arts; especially in the application of science to the arts of mining and metal-urgy, mechanics, engineering, architecture, agriculture and commerce, together with instruction in military tactics, and in such branches in the department of letters, as are necessary to a proper fitness of students for their chosen pursuits, and as soon as the income of the university will allow, in such order as the wants of the public shall seem to require, the said courses in the sciences and their practical applications shall be expanded into full and distinct schools or departments." (Laws 1890-91, Ch. 75, sec. 2; Rev. Stat. 1899, secs. 486, 487.)

As above mentioned the act of Congress admitting Wyoming into the Union as a state was approved and took effect July 10, 1890. The act of Congress of August 30 of that year, which has been referred to as set out in the petition, provided that the first installment of fifteen thousand dollars thereby appropriated to each state and territory should become due July 31, of the same year. Upon the admission of the Territory to statehood, the act of July 2, 1862, became applicable to Wyoming, subject to its assent and the conditions imposed by that act. The first state legislature con-
96 vened November 12, 1890. In the message of the Governor to that body it was said, in relating the financial condition of the new state, that "the university will, doubtless, succeed in obtaining $15000 from the United States government for the present year on account of agricultural college appropriation made by Congress." Under the head of official reports, the Governor stated that the trustees of the University, in a very full report, note the progress of that institution. * * * A desire is expressed for the United States appropriation, payable annually, for agricultural and mechanical college, and it is confidently claimed that the University can provide the necessary instruction to earn and entitle it to the full amount of appropriations granted by the United States." The message further called special attention to the act of Congress of August 30, 1890, and informed the legislature that the Governor had applied, on the part of Wyoming, for the installment then due, to be paid into the state treasury for the use of the University; that it would be necessary for the legislature to assent to the provisions of the law in order for the state to avail itself of the fund; and it was suggested that "it may be advisable not to create a new institution, which will draw appropriations direct from the state treasury for erection, establishment or maintenance, until we shall have recovered from the extraordinary expenses made necessary at this time by causes mentioned elsewhere in this message."

At that session the legislature passed an act assenting to the act of Congress of August 30, 1890. Said act reads as follows:

"SEC. 1. The University of Wyoming having been designated by the Secretary of the Interior as the proper institution to receive and expend the moneys appropriated by an act of Congress, approved August thirtieth, eighteen hundred and ninety, entitled "An act to apply the portion of the proceeds of the public lands to the more

complete endowment and support of the colleges for the benefit of agriculture and the mechanic arts, established under the provisions of an act of Congress, approved July Second, eighteen hundred and sixty-two," until such time as there may be an agricultural college established in this state, separate and apart from said university of Wyoming, assent is hereby given to all the terms and conditions of the said act of Congress and the grants of money authorized and made by said act are hereby assented to and accepted by the State of Wyoming."

97 "SEC. 2. The treasurer of the state of Wyoming is hereby designated as the proper officer to accept and receive said moneys so granted by said act of Congress, and to disburse the same in accordance with the provisions of section two of the said act of Congress." (Laws 1890-91, Ch. 74; Rev. Stat. 1899, Sec. 499.)

Chapter 75 of the published laws of said session, is an act to amend certain provisions relating to the University. Section 12 of that act provides for an annual state tax for the support of said institution, and section 13 contains a recital in the same words as those contained in section 1 of the act above quoted, following which recital the section reads: "Assent is hereby given to all the terms and conditions of said act of Congress, and grants of money authorized and made by said act, by the act of March 2, 1887, relative to the establishment of agricultural experiment stations, or any other act for like purposes, are hereby assented to and accepted by the State of Wyoming. Except where other designation is made by Congress, all monies granted or donated by Congress in aid of scientific instruction or experimentation, and set apart by the legislature for such use by the University of Wyoming, shall be accepted and received by the State Treasurer, and by him placed at the disposal of the board of trustees of the said University by transfer to the treasurer of said board, for disbursement in accordance with the provisions of the act or acts of Congress aforesaid." (Rev. Stat. 1899, sec. 500.)

An act was passed by the same legislature, approved January 10, 1891, providing for the establishment and location of the Wyoming Agricultural College. (Laws 1890-91, Ch. 92.) As the relators claim existence as a college, and trustees, respectively, under that act a somewhat extended reference to its provisions seems advisable. The first section provided: "There shall be established in this state 'The Wyoming Agricultural College,' which shall be located by a vote of the people as hereinafter provided, and which shall be a public educational institution." The objects of the institution are stated in section two as follows: "The objects of said agricultural college shall be to provide an efficient means of imparting to young men and young women, without regard to color, on equal terms, a liberal education and a thorough knowledge of such arts and

98 sciences as will aid in the prosecution of agricultural pursuits with their varied applications."

That act further provides that the government of the college shall be vested in a board of five trustees, to be appointed by the governor, by and with the advice and consent of the senate; that the term of

office of said trustees shall be four years, except as otherwise provided; that at the next session of the legislature after the location of the college it shall be the duty of the governor to nominate, by and with the advice and consent of the senate, five residents of the state as members of the board, three for two years and two for four years, and thereafter at each session of the legislature to nominate, and, by and with the advice and consent of the senate, to appoint successors to such of said trustees whose term of office have expired or will expire during such legislative session; and that any vacancy in the board shall be filled by appointment by the governor until the next session of the legislature. The board is given power by the act, (1) to elect one of its members president of the board, (2) to appoint a secretary and treasurer from among its members, and such other officers "as it may deem necessary for the good order and government of the said agricultural college, and to prescribe the duties and fix the compensation of all such officers."

(4) "To procure by purchase, donation or otherwise, in the name of the state of Wyoming, within or near the limits of the city, town or village chosen as the seat of said agricultural college, as hereinafter provided, a suitable site upon which to erect suitable, convenient and proper buildings for the said agricultural college and to superintend the erection of such buildings; *Provided*, that said trustees shall not purchase any site or contract for the erection of any building until the funds shall be in their hands with which to pay for the same."

(5) "To possess and use for the benefit of the said agricultural college the buildings and sites that may be provided therefor." (6) "To take and hold for the use and benefit of the said agricultural college any real or personal estate, and to dispose of the same in such manner as they may deem most conducive to the interests of said agricultural college." (7) "To expend any and all income that may be placed under the control of such board, by donation or by law or otherwise, in such manner as shall best promote the 99 interests and prosperity of the said institution." Further, to elect a president and faculty of the college, and prescribe the duties and salaries of professors, tutors and officers, and the course of study and discipline to be observed in said institution, and the price of tuition therein; and "to make all by-laws and rules necessary and proper to carry into effect the powers herein conferred."

Other provisions of the act that may become material are as follows:

"SEC. 12. The trustees of said institution shall provide for the tuition, free of charge, of such students from each county as may be selected and appointed by the board of county commissioners of such counties."

"SEC. 13. In the management and application of any property, real or personal, granted, devised or bequeathed to the use of said agricultural college, or the proceeds thereof, the trustees shall conform to the will and directions of the donor thereof, if any such directions shall have been connected with such grant, devise, bequest or donation."

"SEC. 17. A board of visitors for said agricultural college, to consist of three persons, shall be appointed biennially, at the commencement of the college year by the governor of the state. It shall be the duty of the board of visitors for said institution to make a personal examination into the state and condition thereof and all its affairs, twice at least in each year, and report the result to the governor, suggesting such improvements as they may deem proper, which report shall be submitted to the legislature at its next session. Such visitors shall receive no compensation for their services."

The act provided for submitting the question of the location of the college to a vote of the people at the general election to be held in November, 1892, and that the city, town or village receiving the highest vote as the seat of said college should be the permanent seat at or near which the same should be located. Candidates for the location were limited by the act to cities, towns or villages in the state, containing not less than one hundred inhabitants, and situated at an elevation above the sea level of not more than fifty-five hundred feet; and it was provided that any and all votes cast for any city, town or village not eligible should not be counted. Provision was made for the nomination of candidates for the location in the manner provided by law for the nomination of candidates for public office.

It is alleged in the petition that the question of location was submitted in pursuance of the provisions of the act, and that the town of Lander received the highest vote, and became thereupon the seat of said college. With the exception of those sections of the act relating to the submission of the question of location, the provisions were brought into the revised statutes of 1899, and are found in sections 504 to 519 inclusive. This particular institution does not appear to have been again mentioned in any act of the legislature until the session that convened January 10, 1905. At that session an act was passed, approved February 7, 1905, entitled: "An act to repeal Chapter 92 of the session laws of the State of Wyoming of the years A. D. 1890-1891, being an act entitled, 'An act providing for the establishment of The Wyoming Agricultural College, and to provide for the location and government of the same, and for the instruction to be therein given, and for other purposes,' approved January 10th, A. D. 1891; and also so much of said act as is embraced in sections 504 to 519 both inclusive, of Chapter 2, Title 6, of the revised statutes, Wyoming, 1899, entitled 'The Wyoming Agricultural College." Section one of the act so entitled provides that said act of 1890-1891 and the sections of the revised statutes 1899 containing its provisions, describing them as in the title, "be and the same are hereby repealed."

The agricultural college as established by the act of January 10, 1891, became, however, the fruitful source of legislative discussion and contest. It is a matter of public history, with which practically every citizen of the state must have been more or less familiar, that at the several sessions of the legislature subsequent to the election of 1892, those interested in the promotion of the new institution persistently urged the enactment of laws appropriating money or levy-

ing taxes for the purpose of securing a site for the college, erecting the necessary buildings, and supporting it; but that the measures introduced to that end were repeatedly defeated, through the determined opposition of the friends of the University, and others interested in maintaining the integrity of the latter institution, and preventing the imperiling of its departemnt of Agriculture
101 and Mechanic Arts supported largely by the generous bounty of the government. The biennial agitation of the question whether the two institutions should be maintained culminated in the repealing act aforesaid.

Counsel for the respondent have presented and argued several objections to the maintenance of this suit. It will not be necessary to consider all of them, but they may as well be briefly stated. It is urged that the relators are without capacity to sue, first, because neither the college nor the trustees are specially made a body corporate, or given power to sue or be sued, in the act establishing the college; and, second, whatever right to sue may have been granted or implied by the act of 1891, the repealing act of 1905 operates effectively at least to abolish the office of trustee and to deprive the college of the governing board. It is moreover contended that the repealing act is even more effective, and has abolished the institution itself that was created by the original act. It is also argued that the provisions of the act of 1891 for the location of the college were unconstitutional and void on account of the restriction upon the eligibility of candidates; that such candidacy was limited in effect to not more than six places in the state; and it is contended that no just or proper reason can be assigned for a restriction as to altitude or number of inhabitants in allowing the people to select a location for an agricultural college. Hence it is argued that, in fact, the college was not located by the people, since their choice was so unreasonably limited by the legislature. Counsel further assail the constitutionality of the entire act of 1891. In that connection it is strenuously argued that when the constitution of the state was framed and adopted, the university had been created, and, with its several departments, including an agricultural department, was in successful operation; and that, as said institution "with its several departments," is by the constitution itself confirmed and declared to be the state university, the legislature is powerless to establish another university or to invest another institution with any of the functions of the then existing university. And the provision of the constitution declaring vested in the university all lands theretofore or to be thereafter granted "by Congress unto the University as such, or in aid of the instruction to be given in any of its de-
102 partments, with all other grants, donations, or devises for said university, or for any of its departments," is contended to be broad enough to cover and include all the grants and donations under the acts of Congress in aid of colleges of agriculture and mechanic arts, and therefore to vest all such grants and donations in the University. The proposition that the repealing act annulled the institution is based upon the ground that it was a public institution if anything, and, if a corporation at all, a public corporation, and as such subject to the absolute will of the legislature. Thus it

will be observed that the arguments open a broad field of inquiry embracing a variety of questions.

On the other hand, counsel for relators insist that under section one of article seven of the constitution, the legislature is granted express authority to establish any such educational institutions as it may deem necessary; that the agricultural college in question was not only established in pursuance of constitutional authority, but, as required by the constitution, was located by the people; and having been so located, the act of the people in that respect cannot be overthrown by a repeal of the act authorizing such location. It is earnestly contended by counsel for relators that the college was created by the people through their vote in locating it, by authority of the act submitting the question of location to them. It is therefore argued that the repealing act is void; first, because it attempts to abolish an institution created by the people; and, second, that the institution is, as determined by its granted powers, a private corporation, its character constituting a contract, the impairment of which by legislative act is prohibited by both the state and Federal constitution-. They further contend that the University is not a proper institution to receive and expend the government donations, for the reason, as argued, that its leading object is not instruction in those branches of learning related to agriculture and mechanic arts; that the statute designates that institution to receive such donations only until a separate agricultural college shall be established in the state; and that the relator college has been established as such separate institution, therefore entitling it to the benefit of the congressional grants in controversy. It is perhaps needless to add that counsel for relators maintain the constitutionality of the provisions of the act of 1891 for the location of the college, and that the restrictions were proper and reasonable.

103 It seems to be the theory of the relators that the relator college occupies the position of beneficiary of the grants of land and money under the aforesaid acts of Congress as a result of its establishment and location, and the commencement of its operations. It is not clear that the allegations of the petition show sufficiently, if that should be deemed essential, that the college has gone into such active operation that it possesses the necessary opportunities for expending the government money in the manner required by the restrictions placed upon such expenditure. The purchase of a site is averred, and the opening of a school two days thereafter upon the site; but we are left to surmise the erection or possession of appropriate buildings and the continuation of college instruction. But, assuming that the college is not subject to objection on any such ground, either in fact or law, let us consider at the outset what the right of the relators may be in the premises. On their behalf it is argued that the congressional grants of 1862 and 1890 run to the college or proper educational institution, rather than to the state as such; that the State Treasurer is merely the conduit for the transfer of the money appropriated by the act of 1890 from the government to the proper college; that the treasurer, in other words, is the agent of the United States to pay the money to the beneficiary. That

theory, in our opinion, is based upon a misconception of the purpose and effect of the several acts of Congress upon the subject. It is not sustained by the language of the acts, nor has it ever obtained the sanction of the courts which have been called upon to consider and construe those acts. The grants are not to any particular institution, but to the state.

Under the act of July 2, 1862, the lands or land scrip were expressly granted to the several states; and the states were required to pay out of their respective treasuries all the expenses of management, superintendence, and taxes from the date of the selection of the lands, previous to their sales, and all expenses of the management and disbursement of the proceeds, "so that the entire proceeds of the sale of said lands shall be applied without any diminution whatever to the purposes" specified in the act. Any loss in the fund derived under either act of Congress is required to be replaced
104 by "the state to which it belongs." It is provided in the act of 1862 that "No state while in a condition of rebellion * * * shall be entitled to the benefit of this act," and that "No state shall be entitled to the benefits of this act unless it shall express its acceptance thereof by its legislature." By the act of 1890, the annual appropriation is to be paid "to the state or territorial treasurer, or to such officer as shall be designated by the laws of such state or territory to receive the same." In the second section of that act it is provided that payments of the appropriation "that shall become due to any state" before the adjournment of the regular session of the legislature meeting next after the passage of the act shall be made upon the assent of the Governor. Before any state can take the benefit of the acts it must, within the periods respectively provided in the act of 1862 as amended, express its acceptance thereof by its legislature, and provide at least one college of the character therein required. No money can be paid out under the act of 1890 "to any state or territory for the support or maintenance of a college where a distinction of race or color is made in the admission of students." On or before July first in each year the Secretary of the interior is required to ascertain and certify to the Secretary of the Treasury "as to each state and territory whether it is entitled to receive its share of the annual appropriation." If any appropriation be withheld the facts and reasons must be reported to the President, and "the state or territory" may appeal to Congress.

These and other provisions that might be referred to clearly show that the grants and appropriations are to the states, though they are severally charged with the important trust of applying the funds so derived solely and faithfully to the purposes set forth in the acts making the grants and appropriations. The treasurer is the agent of the state to hold and disburse the fund as directed by the laws or the proper authority of the State. It is the right and duty of the State to select or designate the institution to receive and expend the funds, and for the faithfulness of such expenditure the State is made responsible. The right to select the beneficiary should therefore not only naturally belong to the state; but if the State desires to retain the grant it must make such selection; and that duty is all the more

imperative where there are two or more qualified colleges in
104½ the state claiming a share of the funds. In a matter of that kind the state can only act through its legislature, unless indeed there should be a proper controlling provision on the subject in the constitution. One condition of the grant is that the state shall provide at least one college, within the period limited by the act of Congress, "or," it is enacted "the grant to such state shall cease." Where would the authority of the State to provide a college ordinarily reside, if not in the Legislature? Again it is declared that the lands and moneys granted shall be "inviolably appropriated by each State" to the endowment and support of at least one college for the teaching of certain branches of learning, "in such manner as the legislatures of the States may respectively prescribe." The act itself therefore not only recognizes the authority of the state legislature in the premises, but expressly requires the money to be appropriated for the specified objects in the manner prescribed by the legislature.

The case of Massachusetts Agricultural College *v.* Marden, 156 Mass. 150, is an instructive one upon this subject. That was a mandamus proceeding to compel the Treasurer and Receiver General of the state of Massachusetts to pay over to the Treasurer of the petitioner a fund received under the Act of Congress of August 30, 1890. The contest was really between the Agricultural College and the Massachusetts Institute of Technology. The last named institution had been made a party to the proceedings, and it claimed a right to participate in the fund. It was held that the act of Congress gave no preference to agriculture over the mechanic arts; that it contemplated the endowment of colleges already in existence as well as those afterwards to be established; that the fund is not necessarily for the benefit of only one college in each State; and that the grant or donation is to the state to be paid out by the State Treasurer only as directed by the legislature. The court said: "The money in the hands of the Treasurer and Receiver General is the property of the state, held under the law for a particular use and no other. Whether the state has or has not power to control it in his hands otherwise than to direct the use of it in conformity with the act of Congress, it is clear that neither the state nor the respondent has a legal right to divert it, and that, if there are different ways in
which it may be used under the provisions of the statute of
105 the United States, the State alone, acting by its legislature, can choose between them." And again, "the appropriation by Congress was to the State, and the payment to the respondent was for the use of the State, and the only limitation on the right of the State is to use it for the more complete endowment and maintenance of a college, or of colleges, established in accordance with the act of 1862. * * * The legislature should determine to which of the two claimants it will give the fund in the hands of the respondent, or whether it will give a part of it to one and a part to the other. The respondent has no right to pay it out until he is directed to do so by the State."

In the case of Brown University *v.* Rhode Island College of Agriculture & Mech. Arts, 56 Fed., 55, the question was directly con-

sidered whether the grant under the act of August 30, 1890, is to the State, or to the Treasurer of the State, or to the College through him as a mere channel of payment. After referring to several provisions of the act, the learned judge, before whom the cause was heard said: "It seems to me very plain that these words import, on their face, a grant to the State, and, by consequence, a duty in the State to administer the grant for the prescribed purpose; and I am unable to see any consideration arising from the nature of the case, which should modify this plain import. The provisions as to payment to the treasurer and payment by him do not necessarily exclude the controlling action of the state. * * * The complainant contends that the treasurer, under the act of Congress, has the simple ministerial duty to pay over the fund to the treasurer of the Agricultural College. But here, it appears, are two corporations, each claiming to be the beneficiary. In order to determine between these conflicting claims, he must decide what action is necessary to constitute a beneficiary, and also whether such action has been in favor of each of the claimants. This decision seems to me appropriate for the state by legislative act, and not for an officer controlled by judicial mandate. The state is to establish the beneficiary, to control its funds, to be responsible for its misdeeds and for its errors, if any there be, as to the application of the funds; and I find myself unable to resist the conclusion that, unless restrained by clear words or certain implication, the state has the sole right to ascertain
106 in the beginning, and at each successive step, the identity of the corporation which it has so designated, and for which it is so responsible."

In Regents of the University *v.* Hart, 7 Minn. 72, concerning a somewhat similar question the court said: "The title to the lands reserved by Congress for the 'use and support of a State University,' is in the State, and not in the corporation, and all property acquired by the Regents, real and personal, with the fund placed at their disposal, is the property of the state, the corporation being merely a trustee or agent, with specified powers, to use it in a particular manner, for a given end."

Should it be conceded that, in case of a single institution in a state, and that a public institution, coming within the provisions of the Congressional enactments, it might receive the fund without specific legislative direction, which however we are not ready to concede, it is plain that where there are two or more conflicting claimants, each possessing the requisite qualifications, it is the duty of the state acting through its proper authority, as a prerequisite to a disposition of the grants, to designate the beneficiary. (*In re* Agricultural Funds, 17 R. I. 815; State *ex rel. v.* Knowles, 16 Fla. 577; Yale College *v.* Sanger, 62 Fed. 177; State *v.* R. R. Co., 51 Miss. 361; Vincenheller *v.* Reagan, (Ark.) 64 S. W., 278; People *ex rel. v.* Davenport, 117 N. Y. 549.)

That the University, as an institution, fulfills all the prescribed conditions upon which the funds are donated by the Government cannot reasonably be doubted. It is an educational institution provided by the state. Though embracing several departments, its

authorized courses of study cover the branches of learning in aid whereof the donations are made; and it maintains a department or departments for the purpose of imparting instruction in those branches. Its continued enjoyment of the benefit of the donations renders it evident that it has been and is deemed a proper institution by the officers of the Government in charge of the appropriations; and at the first session of the state legislature, that body, in the act accepting the grant, recorded the fact that the Secretary of the Interior had so designated the University. The law does not require that the "leading object" of the aided institution in its entirety, or as a complete institution, be the teaching of the branches of
107 learning related to agriculture and mechanic arts. A university may and usually does embrace several colleges. Our statutes expressly declare that the State University "shall embrace colleges or departments of letters, of science, and the arts," that the "college or department of the arts shall embrace courses of instruction in the practical and fine arts; especially in the application of science to the arts of * * * mechanics, engineering, architecture, agriculture and commerce, together with instruction in military tactics." It is sufficient if the aided institution maintains a college or department whose leading object is instruction in the prescribed branches, and applies the funds to the support of such college or department; and the institution will not be rendered incapable of appropriating the donations from the fact that a majority of its students are enrolled in other departments.

Until 1893 the donation to Connecticut was granted by the state to Yale college, in consideration whereof that institution equipped its department or college known as "Sheffield Scientific School." (Yale College *v.* Sanger, 62 Fed. 177.) In Rhode Island, Brown University was for a long time the beneficiary; in New Jersey, Rutgers College. (Trustees, &c. *v.* Morgan, 57 Atl. 250.) From the reports of the commissioner of education it appears that in at least twelve states the State University is the beneficiary of the fund; and in several others the declared beneficiary is the department of Agriculture and Mechanic arts of the State University. We are unable to ascertain that the propriety of such use of the fund has ever been questioned on the part of the Government.

According to the report of the Secretary of the Interior, dated November 29, 1904, the total attendance of students in 1903 at the aided institutions was 50,799, of which number only 18,147 were enrolled in the departments or colleges of agriculture and mechanic arts; and of those students more than ten thousand pursued some engineering course, either mechanical, civil, electrical, mining, chemical, railway, sanitary, textile or general engineering; more than five hundred took the course in chemistry, 194 in architecture, and 1310, in general science; while but 2337 were instructed in agriculture, 68 in horticulture and 66 in forestry. Reports of other years show a similar condition. Yet no intimation is contained in those reports that the comparatively small number of agricul-
108 tural students indicates a misapplication of the funds.

The grants were intended to aid instruction in mechanic

arts as well as agriculture; and it would seem that students in the former largely predominate throughout the country. It was held in Rhode Island that a mere agricultural school was not within the contemplation of the acts of Congress making the grants, and a legislative act was held invalid which attempted to divert the fund from Brown University to such agricultural school. (*In re* Agricultural Funds, 17 R. I. 815.) It might be seriously doubted whether the declared objects of the relator college, and the branches provided to be taught by its trustees as alleged in the petition, include courses of study related to the mechanic arts, though we do not propose to decide that question; nor need we consider whether a college devoted solely to instruction in agriculture to the exclusion of the mechanic arts would meet the requirements of the congressional grants.

The statutes of 1890-91 accepting the congressional grants, and assenting to the conditions thereof have been already quoted. (Laws 1890-1891, Ch. 74; Ch. 75, sec. 13; R. S. 1899, secs. 499-500.) Though the purpose to assent to the use of the funds by the University is rather inartistically expressed in those acts, such a purpose we think is evident; and said acts have undoubtedly been regarded by both the legislature and executive branches of the state government as vesting the funds in the University, temporarily at least. By an act approved February 21, 1895, it was provided that appropriations for the University should specify the purposes for which the same were intended to be used, and it was declared that "such appropriations shall apply to and include all moneys received by the University from the United States for the endowment and support of colleges for the benefit of agriculture and mechanic arts, but moneys so received from the United States shall be appropriated, applied and used solely for the purpose specified in the Acts of Congress regulating the same." (Laws 1895, Ch. 110, sec. 1; R. S. 1899, sec. 501.) By another act approved the same day the Univer-
was recognized as the institution to receive and expend the funds to be donated under the Act of March 2, 1887, relating to agricultural experiment stations; and the duty of the University trustees in the premises was prescribed. (Laws 1895, Ch. 109; R. S.
1899, secs. 502, 503.) By an act approved February 18,
109 1899, such trustees are required, at the close of each scholastic
year, to report in detail to the Governor the progress, condition and wants of the University, "and of each school or department thereof" * * * "and such other information as they may deem important, or as may be required *by any law of this State, or of the United States.*" (Laws 1899, Ch. 51; R. S. 1899, sec. 402.) At the same session an act was passed, section one of which, with some amendments of 1901 and 1903 immaterial here, now reads as follows:

"During such time as the University of Wyoming shall be and remain the recipient of the funds, donated by the United States Government to the State, under the act of Congress of March 2, 1887, establishing agricultural experiment stations, and the act of Congress of August 30, 1890, applying certain moneys in aid of Agricultural Colleges, and all acts of Congress amendatory thereof

and supplemental thereto, the Treasurer of the State shall invest in the same class of securities, and at the same rate of interest as provided by law for state funds, all moneys in his hands, derived or arising from the sale of the lands, or any of them, donated to this state by Congress for the use and support of an Agricultural College; such securities to be approved as other loans of state moneys are approved, except that in addition thereto they shall be approved by the President or Vice-President of the board of trustees of the State University; Provided, however, that no profit or interest from such loans or investments shall be paid over for the support of said institution, as hereinafter provided, until all loss or losses, if any, out of the principal of said funds, shall be made good and restored out of said profits and interest * * *." (Laws 1899, Ch. 13, sec. 1; R. S. 1899, sec. 520; Laws 1901, Ch. 14; Laws 1903, Ch. 42. sec. 1.) Section 3 of the act of 1899 aforesaid provided that the net interest and profit on such loans and investments should be at all time- available for use by the trustees of the University for any purpose connected "with the supporting and maintenance of the Agricultural College at the University of Wyoming, not inconsistent or in conflict with" the acts of Congress. And by the act of 1903 all moneys arising from the rental of the Agricultural College lands, the interest and profits upon the "Agricultural College Permanent Land Fund," and the "Agricultural College Permanent Fund of 1903" were appropriated and made available for the support of "The Agricultural College at the University." (Laws 1903, Ch. 42, sec. 3.)

In view of the foregoing provisions unmistakably requiring the treasurer to pay over the funds in controversy to the University, it is not perceived that he would be authorized to make a different disposition of them. Conceding that the use of the funds by the University was assented to only until the establishment of a separate agricultural college in the state, as argued by counsel, it would still require additional legislation to divert such funds from that institution. In the first place the act referred to does not provide that upon the establishment of a separate agricultural college it shall become the beneficiary of the grants; the act falls far short of bestowing the money upon such an institution when established. Even if binding upon future legislatures, it would not authorize the transfer of the funds from the University without further legislation. But there is nothing in the nature of the subject that renders the act conclusive upon subsequent legislatures. Who is to determine when such a college has been established within the meaning of the act? Evidently the legislature has not deemed the relator college entitled to the money, although it was in terms established by the act of 1891, and located in 1892; for not once has it been recognized by legislative enactment, except by the act repealing the law under which it came into existence. And this brings us to the important question in the case, viz: The effect of the repealing act upon the right of the relators to the funds in controversy. It is contended by counsel for respondent that it disposes of every question in this case for

the reason that it legislated out of existence the Wyoming Agricultural College and its trustees established by the act repealed. On the other hand it is urged that the repealing act is itself unconstitutional and void. (1) Because it violates the state and Federal constitution in that it impairs the obligation of a contract; (2) because it attempts to abolish an institution created by the people. These objections will be considered in their order.

First, it is contended that the Wyoming Agricultural College is a private corporation, and that its *character* constitutes a contract, the annulment of which is prohibited by section 36 of Article
111 I, of the state constitution providing that, "No *ex post facto* law, nor any law impairing the obligation of contracts shall ever be made," and also the constitution of the United States, which provides: "No state shall pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts."

Since the decision of the Supreme Court of the United States in the great case of Dartmouth College *v.* Woodward, 4 Wheaton, 518, the principle announced in that case has been regarded as well settled in this country, that the charter of a private corporation is a contract within the meaning of the aforesaid clause of the Federal constitution prohibiting the passage of state laws impairing the obligation of contracts. But the effect of the doctrine has in more recent years been largely overcome by the reservation in particular charters or in state constitutions or laws of the right of amendment or repeal. We have such a provision in our own constitution: "All laws relating to corporations may be altered, amended or repealed by the legislature at any time when necessary for the public good and general welfare." (Const. Art. X, Sec. I.)

The principle laid down in the Dartmouth College case, and since maintained upon its authority, has been confined strictly to private corporations. In a later case before the same eminent court it was said that the principle "has no application where the statute in question is a *public law relating* to a *public subject* within the domain of the general legislative power of the state, and involving the *public rights* and *public welfare* of the entire community affected by it." The opinion then quotes the following from the opinion of Chief Justice Marshall delivered in the Dartmouth College case, which has been frequently quoted and referred to as a test for determining when the principle of the case is to be held applicable:

"That the framers of the constitution did not intend to restrain the states in the regulation of their civil institutions, adopted for internal government, and that the instrument they have given us is not to be so construed may be admitted. The provision of the constitution never has been understood to embrace other contracts than those which respect property, or some object of value, and confer rights which may be asserted in a court of justice * * *. If the act of incorporation be a grant of political power, if it
112 create a civil institution to be employed in the administration of the government, or if the funds of the college be public property, or if the state of New Hampshire, as a government, be alone interested in its transactions, the subject is one in which

the legislature of the state may act according to its own judgment, unrestrained by any limitation of its power imposed by the constitution of the United States." Continuing the learned court say that the judgment in the Dartmouth College case proceeded upon the theory that the college was "a private eleemosynary institution, endowed with a capacity to take property for purposes *unconnected with the government,* whose funds are bestowed by individuals on the faith of the charter." After referring to the absolute power of the legislature of a state over public offices, except as restrained by its own constitution, and the absolute character of the police power of the states, and that concerning municipal corporations, the opinion continues: "In all these cases, there can be no contract and no irrepealable law, because they are 'governmental subjects,' and hence within the category before stated. They involve *public interests,* and legislative acts concerning them are necessarily *public laws.* Every succeeding legislature possesses the same jurisdiction and power with respect to them as its predecessors. The latter have the same power of repeal and modification which the former had of enactment, neither more nor less. All occupy, in this respect, a footing of perfect equality. This must necessarily be so in the nature of things. It is vital to the public welfare that each one should be able at all times to do whatever the varying circumstances and present exigencies touching the subject involved may require." (Newton *v.* Comm'rs, 100 U. S. 548.)

It is universally conceded that the charter of a public corporation is not a contract, and does not come within the clause of the constitution under consideration. It follows, therefore, that where a college is a public institution, or, if a corporation, a public corporation, its charter may be amended, altered or repealed at the pleasure of the legislature. (7 Cyc. 285; 10 *id.* 157; 7 Ency. L. 637; 1 Thompson on Corporations, sec. 25.) The chief difficulty in any case is to determine the class within which the particular institution falls. It is impossible perhaps to frame a comprehensive
113 definition of a public corporation within the principle we are now considering. Counties, towns, and municipal corporations are common examples. They are governmental agencies vested with a limited governmental control over localities. But there are other institutions differing from them in character, but which are no less agencies of the government to carry out some matter of administrative concern. Judge Thompson, in his work above cited, says: "Where the State pursues the policy of maintaining at the public charge a system of education, consisting of common schools, seminaries, colleges, or universities, the corporations through the agency of which this is done are generally regarded as *public* corporations, whether created by general or special laws." Again, it is said: "Where universities and colleges are originated and prosecuted by legislative enactment, independent of private contributions, they are, as a rule, held to be *public* corporations, and their charters may be altered, amended or repealed by the legislature at pleasure." (29 Ency. L. 321.) And the colleges, or universities founded and incorporated by the state to take and ex-

pend the aid of the National Government to instruction in agriculture and mechanic arts have usually been considered public corporations; and the same is true, as a rule, of state universities or other institutions of learning established by the State and controlled by it.

The Rhode Island College of Agriculture and Mechanic Arts was held by the Supreme Court of that State to be a State Institution; the court say: "Said College is a state institution; the title to the land, buildings, and other property is in the State; and the board of managers, although made a corporation, * * * is but the agent of the State to carry out the purposes of the General Assembly in connection with the establishment and maintenance of the college." (Tucker *v.* Pollock, 21 R. I. 317.) In Utah, the Agricultural College which was established by the legislature was held to be a public institution, and that the trustees thereof are officers within the meaning of the organic act of the Territory requiring all officers not otherwise provided for to be appointed by the Governor by and with the advice of the legislative council. From the opinion it appears that the law governing the institution bears in some respects a close resemblance to the act establishing the relator college. The court said:

"The college was designed to be one of the permanent institu-
114 tions of the Territory. It was to be under the control of trustees, who were to 'enact by-laws and rules for the regulation of all its concerns," who, in addition to controlling all its financial affairs and business interests, were to appoint professors, teachers, and other officers and assistants of the college." The Oklahoma Agricultural and Mechanical College is held to be a public institution. "It seemingly needs no argument to show that the public educational institutions of a state are as much a part of its sovereignty as are its counties. (Oklahoma A. & M. College *v.* Willis, 6 Okla. 593, 40 L. R. A. 677.)

The Supreme Court of Alabama, in a leading case on this subject, say: "While we would unhesitatingly maintain the doctrine that an act establishing a private corporation forms a contract by which the State is bound, we have no doubt but the President and Trustees of the University of Alabama constitute a public corporation, and that their charter may be altered, amended, or repealed by the General Assembly, at pleasure." And again, "What is the corporation, consisting of the President and Trustees of the University of Alabama, but an instrument of government created for its purposes." (Trustees of Univ. *v.* Winston, 5 Stew. & Port. 17.)

The question arose in North Carolina whether the State University was a public or private corporation. It had been established by the State, upon public funds, though private donations had been also invited, and received. The court said: "But the Court is further of opinion that the University is a public institution and body politic, and, hence subject to legislative control. It is admitted, and the Court is prepared to hold, that charters of corporations, founded by individuals, on their own funds, either for their own emolument, or for the purposes of education, or other general charity, are contracts of inviolable obligation. The admission and exclusion of members, the qualification of directors or trustees, the mode of keep-

ing up their succession, and the government of such corporations, are absolutely fixed by the charter, and can only be modified by the concurring will of the legislature and the corporations. The property of such a corporation, also is as secure as that of an individual citizen. But the University was founded by the State, on the public funds, and for a general public charity. * * * The trustees were not of private appointment or designation; nor had they a faculty of keeping up the succession, of themselves; and no
115 person in particular derived any exclusive advantage from the corporation. But, on the contrary, the election of trustees has ever been by the legislature, and their number, more or less at different periods, as directed for the time being, by the legislature. There is no power, but their own sense of the public interest, and their representative responsibility, which can coerce the members of the legislature to keep up the succession by elections to fill vacancies as they may occur; and therefore the corporation was not only originally the creature of the legislature, but it is absolutely dependent on its will for its continuing existence. Hence, it seems to the court, that there cannot be an instance of a corporation more exclusively founded by the public, more completely the creature of public policy, for public purposes purely, than the University of North Carolina. * * * It is true, that since the incorporation, there may have been donations to the college; but that would not alter the nature of the foundation, nor the character of the corporation. It is merely a political agent—an instrument of State; and it follows, that its organization, duration and government, its powers of acquiring property; and the disposition of property belonging to it—at all events, so far as it is of public endowment—are subjects for legislative regulation." (University *v.* Maultsby, 8 Ired. Eq. (43 N. C.) 257.)

An interesting case in Florida is quite in point. There, an act of the Legislature had established the Florida Agricultural College, and named the trustees of the institution. It had been established to secure the benefit of the Act of Congress of July 2, 1862. The trustees selected a site for the college, having previously advertised for propositions from different localities desiring the location for contributions to aid in the construction of the college. Such advertisement resulted in a donation of over 2000 acres of land, on condition of the location of the college at the place selected; and the construction of buildings was thereupon commenced. Subsequently, another act was passed slightly changing the name of the college, changing the management by removing the trustees named in the former act and substituting others, and also authorizing a removal of the college to another place. The act required the treasurer of the former board to deliver the property thereof to the new trustees. A demand for
116 such propererty having been refused, a proceeding in *quo warranto* was brought to test the right of the former trustees to continue to act as a body corporate. It was claimed by the respondents that the later act of the legislature was void on the ground that the original institution was a private corporation, and also in consequence of the contract locating the college. The court said:

"The corporation is itself founded by the State through property derived from the Government of the United States. These trustees are made by this legislation the agents of the State to collect and disburse property appropriated by the General Government to the State for a public purpose. There is not and never was any private property in the trustees in the funds. They were derived from the government. The founder of this institution was the government of the State of Florida, and the property which constituted its basis was public moneys of the State of Florida derived by it from the government of the United States in trust for the establishment of an institution of this character. It never was the purpose of the State of Florida to give these trustees any private right to this property. Throughout the whole legislation they are shown to be simple public agents to manage a public property. The only right they have to it is by legislation of the State, and every section of these acts shows that it was founded by public funds and for a public purpose." And the act, including the provision for removal, was held valid notwithstanding the contract whereby the college had been located between the trustees and the person donating the lands as aforesaid. (State *ex rel. v.* Knowles, 16 Fla. 577.) There are numerous other cases aptly illustrating the distinction between a public and private institution, and holding a college established by the state under acts more or less similar to our own to be a public corporation or institution. (State *v.* Vicksburg etc. R. Co., 51 Miss. 361; Dart *v.* Houston, 22 Ga. 506; Estate of Royer, 123 Cal. 614; State *ex rel.* Little *v.* The Regents etc., 55 Kan., 389; 29 L. R. A., 378; Dunn *v.* Univ., 9 Oreg., 357; Neil *v.* Trustees of Agr. & Mech. Coll., 31 O. St., 15; McCormick *v.* Thatcher, 8 Utah, 294; Regents etc. *v.* McConnell, 5 Neb., 423; State *ex rel. v.* Regents etc., 46 Neb., 373; Society etc. *v.* State, 58 Neb., 447; State *ex rel. v.* McMillan, (N. Dak.) 96 N. W., 311; Henn *v.* State Univ. 22 Ia., 185; Weary *v.* State Univ., 42 Ia., 335; Thomas *v.* Ill. Industrial Univ., 71 Ill., 310; Illinois
117 Industrial Univ. *v.* Champaign County, 76 Ill., 184; Head *v.* Univ., 47 Mo., 220; Univ. *v.* R. R. Co., 76 N. Car., 103; Watson Seminary *v.* Pike Co. Court, (Mo.) 50 S. W., 880; Board *v.* Phillips, (Kan.) 73 Pac., 97.)

When we come to examine the act establishing the Wyoming Agricultural College, very little, if anything is to be found to characterize it as a private corporation, within the principle of the Dartmouth College case. In the first place, the act itself declares that the college shall be "A state public educational institution." It is not to be supposed that the legislature was ignorant of the import of that term, nor of the existence of an important distinction between a public and private institution; especially in view of the constitution, which enjoins upon the legislature the duty of establishing and maintaining, in addition to free elementary schools of every needed kind and grade, and a university, "such other institutions as may be necessary" to a "complete and uniform system of *public* instruction" (Art. VII, sec. 1); and which prohibits any appropriation for "charitable, *industrial, educational* or benevolent purposes to any person, corporation or community not under the absolute control of

the state." (Art. III, sec. 36.) By the unequivocal language employed the legislative intention to create, not a private corporation independent of the sovereign will of its creator, but a *public institution, of the state* dependent at all times upon the legislature, and connected with the administrative arm of the state government, as many other institutions, is we think beyond reasonable controversy.

Moreover, the remainder of the act bears out the legislative interpretation of the character of the institution thereby established, within the principle recognized by the overwhelming weight of authority. The trustees who constitute the governing board of the college are given fixed terms of office, and are to be appointed by the governor, by and with the advice and consent of the senate; and all vacancies are to be filled by the governor, but only until the next session of the legislature. Thus, the trustees are granted no power to perpetuate themselves in office, nor to select their successors. They are required to procure a site for the college, but, whether the same be procured "by purchase, donation or otherwise," it is to be taken
"in the name of the State of Wyoming." They are required
118 to admit free of tuition such students as shall be selected and
appointed by the county commissioners of the several counties. The board of visitors are required to suggest in their report "such improvements as they may deem proper, which report shall be submitted to the legislature at its next session." The diplomas to be issued by the faculty of the college in testimony of the literary honors and degrees conferred are required to be "under the seal of the State." A member of the faculty is rendered ineligible as a trustee. It is provided that no religious qualification or test shall be required of any student, trustee, president, professor, tutor, or officer of said institution, or as a condition for admission to any privilege in the same, and that no sectarian tenets or principles shall be taught or inculcated therein; a provision explainable only on the theory that it applies to a public institution. Finally the location of the institution is to be determined by a vote of the people of the state at a designated general election, and the qualification of candidates prescribed; the votes cast upon the question are to be canvassed in the same manner in all respects as provided by law for the canvass of votes cast for candidates for public offices voted for by the electors of the entire state;—Unusual and indeed unnecessary provisions if the college was not to be a *public* institution. "Public institutions" only are required to be located by vote of the people, and that provision is contained in a section of the constitution locating the seat of government, the university, the insane asylum, and the penitentiary, thus in a measure indicating what was meant by "public institutions."

It is true, as alleged in the petition, that the college has not received any public funds; that, from the time of its establishment until the distribution of the Wisser estate in December, 1904, it had not received funds from any source. But it is here seeking public funds, and, as suggested in another connection, the legislature has been importuned at every session to appropriate public funds for its benefit. Moreover, it is apparent that the institution was estab-

lished in anticipation of its support through future appropriations of public money. Private donations to educational institutions in this state, especially public institutions, had not been com-
119 mon, and it does not appear that there had been any offer of such donations, or any proposition of private endowment of this institution if established. And had there been a desire on the part of some individual to endow such an institution he could have secured the incorporation of a private institution under the general laws, which seem to be ample for the purpose. If public aid was not contemplated it is difficult to account for its denomination as a state public institution. It is impossible to adopt any other view than that when the college was established it was the legislative design to create an institution to be maintained by public funds, though incidentally it might receive private assistance, without ignoring the history of the institution and the plain indication of the act establishing it. In the message of the executive to the legislature of 1895, the result of the election locating the "State Agricultural College" was referred to; and it was suggested that "it will be necessary for the State to provide suitable land and buildings" for the college before the congressional funds could be available; and that "The inauguration of the educational institution represents one of the most important questions that will come before the legislature, and one which may be perplexing." At that time, the Governor clearly supposed that an institution had been provided for whose inauguration demanded the appropriation and expenditure of public funds. Though the act establishing the college was silent respecting reports by trustees, a general law was then in force requiring the governing board of every state institution to submit biennial reports to the Governor. (Laws 1890, Ch. 5, sec. 1; R. S. 1899, sec. 180.)

The authority conferred upon the trustees "to possess and use for the benefit of the said agricultural College the buildings and sites" provided therefor, and "to take and hold for the use and benefit of the college any real and personal estate," and "to dispose of the same in such manner as they may deem most conducive to the interests" of said college, is not inconsistent with the character of a public education institution. Such an institution must of necessity have a managing board, and discretion may well be granted the board in respect to the possession and disposition of property connected with the institution; though the property belong to the public.
120 The authority conferred, and the duty imposed under those provisions as well as under another soon to be mentioned relate to public matters, and the trustees in respect thereto are public agents. They are not vested with any private right or private property. Similar powers have been conferred upon trustees of other state institutions of undoubted character as public institutions. They were conferred by the same legislature upon the trustees of the Hospital for Miners, the government of which institution has since been placed in charge of the State Board of Charities and Reform. (Laws 1890-91, Ch. 81.)

Much reliance, in this connection, is placed by counsel for relators

upon the provisions of section 13 of the act, which requires the trustees to conform to the will and directions of the donor of any property "granted, devised or bequeathed to the use of said Agricultural College." In relation to different provisions than those contained in other parts of the act in question, section 13 might have the result contended for, and, in doubtful cases, might perhaps be sufficient to turn the scale. But it is found here in an act clearly establishing a public institution, as determined by every other provision of the act; and it must therefore, in our opinion, be construed in harmony with such other provisions, and the legislative declaration found in the first section. It cannot be held therefore to be sufficient in itself to bring the college established by the act within the class of private corporations coming within the doctrine of the Dartmouth College case. Identically the same provision was contained in the act establishing the University; yet that institution was founded upon public funds, and the original act provided for issuing territorial bonds to provide means for the erection of the college buildings, and for an annual tax to provide an income for the institution. Indeed the act establishing the agricultural college was modeled upon that creating the University as found in the revised statutes of 1887. With few exceptions the provisions of the two acts are the same, section for section; the notable exceptions being the name and objects of the institution, its location, and the absence in the later act of an appropriation for the benefit of the institution, and a provision in the former act authorizing the trustees of the University to incorporate under the general laws
121 which is not contained in the later act. We have never heard it contended that the University was a private corporation, and not a public institution. Upon this point there are other requirements of our constitution that ought not to be ignored. The act of January 10, 1891, under which the relator college is claiming existence, would seem to be a special act in respect to the incorporation of the institution, at least if its incorporation is as a private institution. There was then and is now a general law in force permitting the incorporation of "a college, academy or other like institution for the education of youth," and if not comprehensive enough, or framed along sufficiently broad lines, that law is capable of amendment. The constitution provides that in several enumerated cases special or local laws shall not be enacted, and that "in all other cases where a general law can be made applicable no special law shall be enacted." (Art. II, sec. 27.); and that: "The Legislature shall provide for the organization of corporations by general law." (Art. X, sec. 1.) It might therefore be seriously questioned whether as creating a private corporation the act would have been valid.

The fact that after the founding and establishment of a public state institution by legislative enactment, property may have been given, devised or bequeathed to it, or in trust for its benefit, has never been deemed sufficient to change the character of the institution, nor to deprive the legislature of its plenary power of alteration, amendment or even repeal of the act. In such cases there is no

contract relation between the state and the donor. Such donations must be presumed to have been made with knowledge of the public character of the institution and the power of the legislature to control it. (University *v.* Maultsby, 8 Ired. Eq., (43 N. C.) 257; State *ex rel. v.* Knowles, 16 Fla., 577; Head *v.* University, 47 Mo., 220; Mead *v.* Ballard, 7 Wall. 290.) It would be strange indeed if the legislature could be robbed of its control over a state institution, or if such an institution, without legislative consent, could be made over into a private corporation, through the mere voluntary act of a citizen or a number of citizens in making a gift to the institution.

122 In Head *v.* University, *supra,* it appears that a board of commissioners had been appointed in Missouri to locate the University, and receive grants of land and bids of money from certain named counties to secure the location of the institution. Private citizens of Boone county subscribed a large sum of money, and a certain college subscribed its buildings and apparatus to the building fund of the University; and in consideration thereof the University was located in Boone county. Yet the court said: "But these contributions to the building fund did not constitute the contributors founders of the University. Nor did the contributions alter the nature of the foundation, or change the character of the corporation. Between this and the Dartmouth College case and the cases following that decision there is a broad distinction—namely, the difference that exists between a public institution of the state and a private corporation."

The question as to whether an inviolable contract results from an invited or accepted private donation to a public institution is analogous to the question that arises upon the removal of a county seat where, in consideration of its previous location, private citizens or communities may have donated lands or money. It is well settled in the latter case that no such contract exists. (Newton *v.* Commissioners, 100 U. S. 548; Harris *v.* Shaw, 13 Ill., 463; Schwartz *v.* Commissioners, (Ind.) 63 N. E. 31; Edwards *v.* Lesuer, 132 Mo., 410.) In the case of Schwartz *v.* Com'rs, *supra,* it was said by the Supreme Court of Indiana, that the fact that private parties "made donations * * * of lands or other means to secure the location of the county seat at the point in question, would not in a legal sense constitute a contract, or preclude or estop the state from removing the seat of justice to a point elsewhere in the county, by subsequent or future legislation."

It follows that no contract obligation was violated by the repealing act in question. The effect, if any, of the repeal upon the Wisser devise, or the relation of the trustees thereto, is not before us for consideration. As to the repealing act we are here concerned only with its effect upon the standing of the agricultural college as an es-
123 tablished institution of learning within the sense of the acts of Congress under which the funds in controversy have been donated. And, let it here be said that we have nothing whatever to do with the policy of the law; that is a matter resting entirely with the legislative branch of the government. Should

it be conceded that the legislature had pursued a mistaken policy, in this affair, that would be no reason for avoiding a statute otherwise unassailable. The constitution and laws have not vested in the courts the right to determine the policy of the State in legislative matters. Mr. Justice Brewer, when sitting as a member of the Supreme Court of Kansas, forcibly stated this proposition as follows: "Here the single question is one of power. We make no laws; we change no constitutions; we inaugurate no policy. When the legislature enacts a law, the only question which we can decide is, whether the limitations of the constitution have been infringed upon." (Prohibitory Amendment Cases, 24 Kan. 706.)

Finally it is insisted that the repealing act is obnoxious to the following provision of the constitution: "The legislature shall not locate any other public institutions except under general laws, and by vote of the people." That provision is found in the last clause of section 23 of Article VII; and is immediately preceded by clauses designating the temporary location of the seat of government, the state university, the insane asylum, and penitentiary, and more remotely, though in the same section, by the provision authorizing the legislature to submit to the people the location of said institutions and the seat of government after ten years. The argument on behalf of the relators upon this point is, that the act here assailed attempts to dissolve an institution created by the people. The institution was not however created or established by the people, as distinct from the legislature, either through their votes in locating it or otherwise. Nor have the people by the fundamental instrument of their state government reserved to themselves the right to establish or create public institutions.

The people have reserved the power to vote upon the location of such institutions established or proposed to be established. They did so in respect to the college here in question; and hence we suppose the legislature would be powerless to continue the college in
124 existence and change its location, without submitting the question of change of location to a vote of the people. In view of the limited relief sought in the case at bar, it is unnecessary to consider the effect of the repealing act upon that part of the original act providing for locating the college; that portion of the act has served its purpose, and, for the purposes of this case, we shall take it for granted, without deciding, that the legislature could not destroy the effect of the location of the college, or take away its habitation by merely repealing the sections under which the location had been submitted to and determined by the people. The repealing act therefore will be considered only so far as it affects those provisions of the original act which establishes the college and regulates its affairs and management.

The legislature is vested with all legislative powers of the State; it may do anything within the domain of legislation which is not repugnant to the State or Federal constitutions; and constitutional restrictions upon the legislature are not to be enlarged by construction beyond their terms. Moreover, the power of establishing public institutions is by the constitution expressly vested in the legislature.

Section one of the article in which the clause above quoted is found imposes upon the legislature the duty of providing for the establishment and maintenance of free public schools, and "such other institutions as may be necessary." Section eighteen of the same article provides: "Such charitable, reformatory and penal institutions as the claims of humanity and the public good may require, shall be established and supported by the state *in such manner as the legislature may prescribe.*"

With the one exception of the *location* of public institutions, the power of the legislature over them is unrestrained, and its authority supreme. Unless, therefore, to "locate" is to "establish" an institution of the character of the college in question, it is erroneous to say that the people established it. We think that counsel are mistaken in the supposition that, without a location, an institution cannot exist. Examples are numerous in the books of public institutions which were established and in existence in advance of their location, or the selection of a site; they may not be — a position to con-
125 duct operations until located; but that they may constitute an existing institution, if so declared by the legislature and provided with a governing board is we think self evident. A building site is as essential to the operation of a college as the selection of the town for its location. Yet it appears that there had been no building site secured for this college until January 30, 1905, notwithstanding that it had a governing board long prior thereto, who had been intrusted with property for its benefit.

The location of an institution differs essentially from its creation. In many of the cases cited in this opinion the institution involved had been located by a board or commission appointed for that purpose by the act establishing it, and, usually after receiving bids or donations, such board or commission selected a town or place for its location. It seems never to have been supposed, and we apprehend that none would be so rash as to contend, that the board or commission, in locating the institution, had established or created it. Upon principle however there would seem to be no difference between such cases and the one at bar in this respect. In those cases the location occurred through the agency of a board, in the case at bar through the agency of the people. True, in the case before us, the agency of the people in such matters is provided for in the constitution; but that we think does not alter the situation in regard to the thing attended to, and required to be determined, by the people themselves.

Two cases in Wisconsin have been cited; they are not in point, though they serve to illustrate the principle under discussion. The constitution of that state deprived the legislature of any power to create, authorize or incorporate, by general or special law, any bank or institution with powers of banking, except in the manner provided in the constitution, viz: The legislature was authorized to submit to the voters at any general election the question of "bank or no bank," and if a majority of the voters should be for banks, then the legislature might grant bank charters, or pass a general banking law; but it was provided that no such grant or law should have any

force or effect, until the same should have been submitted to a vote of the electors of the state, and approved by a majority of the votes cast on the subject. It will be seen from this statement that, even after the people had voted in favor of banks, no law enacted
126 on the subject obtained any force until ratified by a vote of the people. Under such circumstances it was necessarily held that the people had reserved to themselves all the legislative power on the subject of banks and banking, and that a law which had been approved by a vote of the people could not be amended without submitting the amendment to a like vote. (See *ex rel. v.* Hastings, 12 Wis., 52; Van Steenwyck *v.* Sackett, 17 Wis., 665.) Now it needs no argument to show that the act establishing the Agricultural College was not submitted to nor ratified by the people. Not a single elector outside of the membership of the legislature that passed the act of January 10, 1891, and the Governor who approved it, was afforded an opportunity of voicing his opinion at the polls as to whether the college should or should not be established. Who is competent to say whether such a proposition would have carried or not, had its submission been required by the constitution, or had it in fact been submitted? The unnecessary submission of a question or an act to a vote of the people, is held not to be conclusive upon the legislature. (Dallis *v.* Griffin, (Ga.) 43 S. E., 758.) It might therefore be suggested in passing that had the constitution required the question of establishing a public institution to be submitted to a vote of the people, then the Agricultural College would not have been legally established.

We think it cannot reasonably be said that the dissolution of an institution overthrows the expressed will of the people when there has never been an expression of the popular will upon the subject. At the election in 1892, by virtue of the act of 1891, the electors were given the choice of two alternatives and two only; either to vote for a place as a seat for the Agricultural College, or not to vote at all. That there should be such a college had been determined by the legislature beforehand; and the constitution does not require that any other choice shall be exercised by the people in the premises, than as to location.

The combined constitutional provisions, as we think they must be read and construed, confer upon the legislature the sole power of establishing public institutions, subject only to the restriction that they shall not be located except under general laws and by
127. vote of the people. There is nothing in that restraint which, in our opinion, can be construed to require an institution once established by the legislature to be perpetuated. Having all the power that exists anywhere to establish an institution, it necessarily has the power to dissolve it, unless the doing so involves the violation of some constitutional provision. And, for the reasons stated, the conclusion, seems to us inevitable that the dissolution by the legislature of an institution established by it, though located by vote of the people, is not in contravention of the clause of the constitution requiring the question of location to be settled by the people themselves.

The repeal of the sections of the act establishing the college, providing it with a managing board, and regulating its affairs, is not a removal of its location in the sense of the constitutional provision. The college has not been removed to Laramie, the seat of the University, as argued by counsel. An agricultural college was a part of that institution before the location of the relator college. Where an act of the legislature disorganized a county, and attached it to another county for judicial, taxing and other purposes, it was held in Minnesota that the act was not to be regarded as removing the county seat, and was not therefore repugnant to a provision of the constitution prohibiting the legislature from removing county seats without the consent of the people to be affected. (State *ex rel. v.* McFadden, 23 Minn., 40.) And it is held that where an office is created by the legislature, the fact that the people may have elected an incumbent will not of itself prevent the legislature from subsequently abolishing the office. State *v.* Douglas, 26 Wis., 428; Conner *v.* Mayor, 5 N. Y., 285; *In re* Registers, 117 Mass., 603.

We are therefore of opinion that the repealing act of 1905 is valid so far at least as to render ineffective that portion of the act of 1891 establishing the Agricultural College, declaring its objects, authorizing the appointment of trustees therefor, and conferring specified powers upon them as such trustees, at least as to the future exercise of such powers. In other words the repealing act has discontinued the Agricultural College established by the act repealed, so far as such College obtained any standing under that act, and there-
128 fore deprived the relators of any capacity, which they might otherwise have had to receive and expend the government donations.

We have been deeply sensible of the importance of the questions involved in this hearing, and of the responsibility attaching to a decision of the case. We have not arrived at a conclusion until after the closest consideration, and the most thorough investigation at our command. We have been ably and fairly assisted by counsel representing both sides. We are convinced that the conclusion to which we have been forced is the only one possible, under the constitution, laws, and authorities. For the reasons set forth in this opinion the demurrer will be sustained.

Beard, J., and Van Orsdal, J., concur.

129 The foregoing opinion bears the following endorsement:

"Supreme Court Wyoming. Filed January 31, 1906. Wm. H. Kelly, Clerk."

130 In the Supreme Court, State of Wyoming.

JANUARY 31, 1906.

Doc. 2, 486.

THE STATE OF WYOMING *ex Relatione* THE WYOMING AGRICULTURAL COLLEGE and MATT BORLAND, A. D. LANE, CARRIE B. MEYER, AMELIA S. HALL, and WILLIAM E. HARDIN, as Trustees of the Wyoming Agricultural College, Plaintiff,

vs.

WILLIAM C. IRVINE, as Treasurer of the State of Wyoming, Defendant.

This cause having been heretofore taken under advisement upon the defendant's demurrer to the petition and alternative writ, and the Court being now fully advised in the premises doth find, for the reasons set forth in the opinion herein this day delivered and filed, that said demurrer is well taken.

It is therefore ordered that said demurrer be, and the same is hereby sustained.

To which order of the Court sustaining said demurrer, the plaintiff and relators by counsel now and here except and object.

131 In the Supreme Court, State of Wyoming.

MARCH 1, 1906.

Doc. 2, 486.

THE STATE OF WYOMING *ex Relatione* THE WYOMING AGRICULTURAL COLLEGE and MATT BORLAND, A. D. LANE, CARRIE B. MEYER, AMELIA S. HALL, and WILLIAM E. HARDIN, as Trustees of the Wyoming Agricultural College, Plaintiff,

vs.

WILLIAM C. IRVINE, as Treasurer of the State of Wyoming, Defendant.

Order.

The demurrer of the defendant to the petition and the alternative writ herein having been heretofore sustained, for the reasons stated in the opinion herein filed on January 31, 1906, now on this day came the plaintiff and relators, by their counsel, and except and object to the order of the court sustaining the defendant's demurrer to the petition and alternative writ, and now elect to stand upon their said petition and said alternative writ and decline further to plead; whereupon, it is ordered, adjudged and decreed by the court, for the

reasons stated in the said opinion, that said petition and alternative writ be, and the same are hereby, dismissed at cost of relators; to which order, judgment and decree the relators except and object.

Endorsed on cover: File No. 20,222. Wyoming supreme court. Term No. 272. The State of Wyoming *ex relatione* The Wyoming Agricultural College and Matt Borland *et al.*, trustees, plaintiffs in error, *vs.* William C. Irvine, as treasurer of the State of Wyoming. Filed April 26th, 1906. File No. 20,222.

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Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1906

THE STATE OF WYOMING, EX RELATIONE THE WYOMING AGRICULTURAL COLLEGE AND MATT BORLAND, A. D. LANE, CARRIE B. MEYER, AMELIA S. HALL AND WILLIAM E HARDIN, AS TRUSTEES OF THE WYOMING AGRICULTURAL COLLEGE.

Plaintiffs in Error,

vs.

WILLIAM C. IRVINE, AS TREASURER OF THE STATE OF WYOMING,

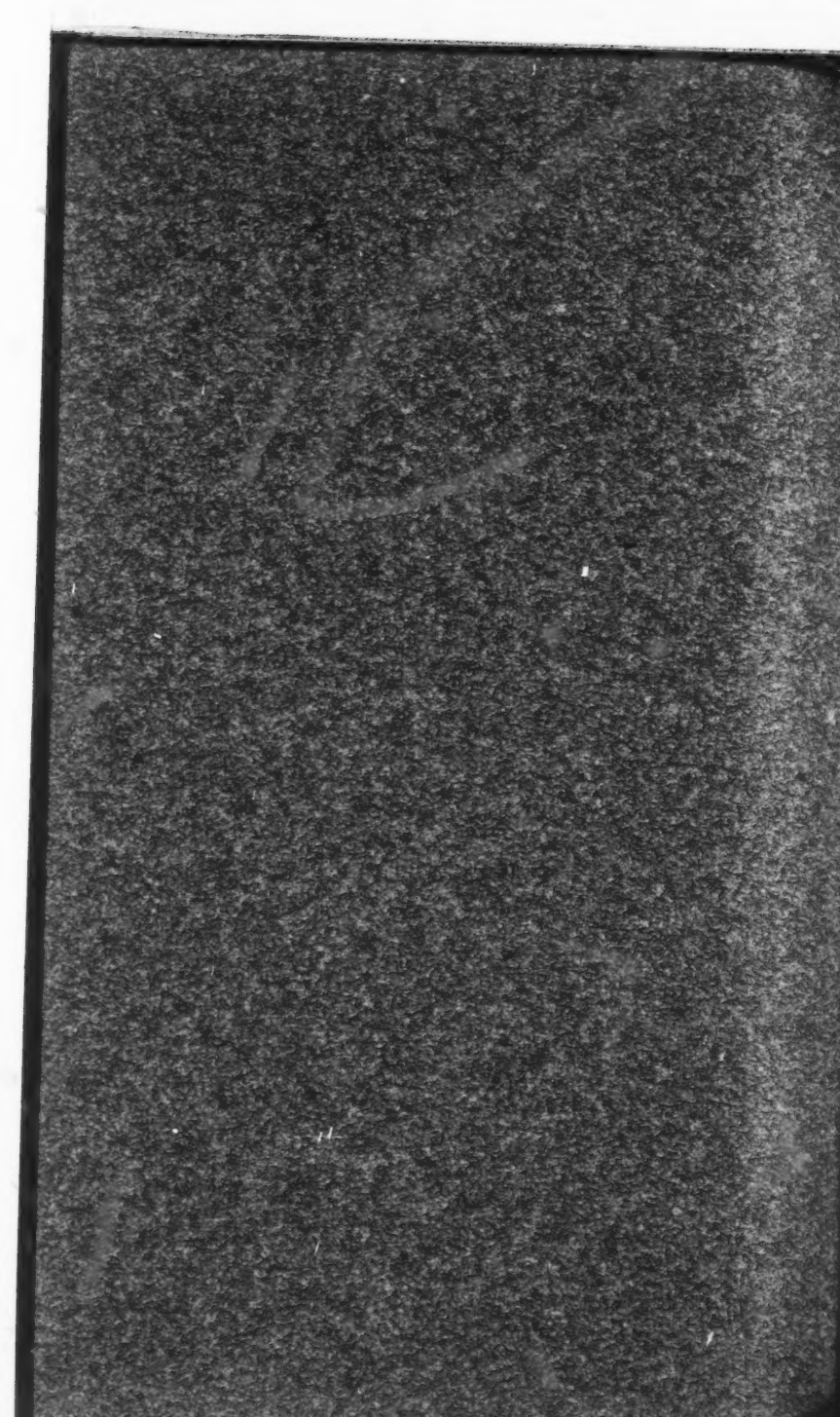
Defendant in Error.

No. 272.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WYOMING.

BRIEF AND ARGUMENT FOR PLAINTIFFS IN ERROR.

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Attorneys for Plaintiffs in Error.



IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1906

THE STATE OF WYOMING, EX RELATIONE THE WYOMING AGRICULTURAL COLLEGE AND MATT BORLAND, A. D. LANE, CARRIE B. MEYER, AMELIA S. HALL AND WILLIAM E HARDIN, AS TRUSTEES OF THE WYOMING AGRICULTURAL COLLEGE. *Plaintiffs in Error,* vs. WILLIAM C. IRVINE, AS TREASURER OF THE STATE OF WYOMING, *Defendant in Error.*	No. 272.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WYOMING.

BRIEF AND ARGUMENT FOR PLAINTIFFS IN ERROR.

STATEMENT.

On July 24th, 1905, plaintiffs in error filed a petition of mandamus in the Supreme Court of the State of Wyoming against defendant in error, praying for a writ of mandamus commanding him to pay to the Treasurer of The Wyoming Agricultural College certain federal appropriations for the mainte-

nance and support of an agricultural college in the State of Wyoming. The petition (Printed Record, pages 14 to 34, inclusive) sets out the following acts of Congress: First, the act of July 2, 1862, granting certain lands or land scrip to the several states, and providing that the proceeds thereof shall be invested to constitute a perpetual fund, and the interest inviolably appropriated by each state taking or claiming the benefit of the act "to the endowment, support and maintenance of at least one college whose leading object shall be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts, in such manner as the Legislatures of the states may respectively prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life." (12 Stat. L., 503-505; 22 Stat. L., 484; 2 Fed. Stat. Ann., pp. 850-853.) Second, the act of August 30, 1890, providing that there shall be appropriated, out of any money arising from the sales of public lands, to each state and territory "for the more complete endowment and maintenance of colleges for the benefit of agriculture and the mechanic arts" then established or which might be thereafter established, "in accordance with an act of Congress, approved July second, eighteen hundred and sixty-two, the sum of fifteen thousand dollars for the year ending June thirtieth, eighteen hundred and ninety, and an annual increase of the amount of such appropriation thereafter for ten years by an additional sum of one thousand dollars over the preceding year, and the annual amount to be paid thereafter to each state and terreitory shall be twenty-five thousand dollars to be applied only to instruction in agriculture, the mechanic arts, the English language and the various branches of mathematics, physical, natural and economic science, with special reference to their applications in the industries of life, and to the facilities for such instruction." (26 Stat. L., 417; 2 Fed. Stat. Ann., 854-857.) Third, the act of March 2, 1887, entitled, "An act to establish agricultural experiment stations in connection with the colleges established in the several states under the provisions of an act approved July second, eighteen hundred and sixty-two, and of the acts supplementary thereto." (24 Stat. L., 440; 1 Fed. Stat. Ann., 9.)

The petition then proceeds to allege the establishment of the relator, the Wyoming Agricultural College, by an act of the Wyoming Legislature approved January 10, 1891 (said act set out in full in Printed Record, pp. 22-26); the location of the college at the Town of Lander, Fremont County, Wyoming, by a vote of the people, to whom the question of location had been submitted as provided in said act, at the general election held in 1892; the appointment soon thereafter of trustees for said college, by the Governor, by and with the advice and consent of the Senate, as required by said act; the organization of the board of trustees by the election of a president, secretary and treasurer thereof; the appointment of new trustees from time to time as required by law, and that such trustees duly appointed have qualified and are acting as such.

Then follow certain allegations in substance as follows: That on June 17th, 1903, one Phillip Wisser, a resident of the County of Fremont, State of Wyoming, departed this life, having by his last will and testament devised and bequeathed to said college, located at the Town of Lander, all his property, both real and personal, after payment of debts, etc., which property was, upon the settlement of the estate of said decedent, by the District Court in and for said Fremont County, on December 17, 1904, distributed, in accordance with the terms of said will, to the persons then constituting the board of trustees of said college "in trust for the Wyoming Agricultural College, which is located at Lander, in the County of Fremont, in the State of Wyoming, to be expended by such trustees and their successors in office for the benefit of the Wyoming Agricultural College at Lander, in the County of Fremont and state aforesaid, according to the terms of said last will"; that said estate so distributed consisted of $17,341.88 in money, and certain real estate described in the petition; that after receiving the money coming to them from said estate as aforesaid, the trustees of the college, on January 30th, 1905, expended nine thousand dollars thereof in the purchase of a site for the college, and an agricultural experiment station, at and within the corporate limits of said Town of Lander, said site consisting of one hundred and sixty acres of land; that said site was then and there designated by said trustees as the site and location of and for the Wyoming Agricultural Col-

lege and Experiment Station in connection therewith; that after the purchase of the site aforesaid, and on January 31st, 1905, the trustees of said college duly convened at Lander and adopted resolutions providing for opening said college, and thereby determined that the school year of the college should consist of three terms of three months each, the first three terms to commence respectively February 1, May 1, and August 1, 1905; that pursuant to such resolutions the college was opened for the enrollment and instruction of pupils on the site aforesaid, February 1, 1905, the board having at its meeting on the preceding day appointed and hired "professors of instruction in English, History, Civil Government, Mathematics, Agriculture, Horticulture, and Irrigation," and that on February 2, 1905, a president and faculty for the institution, and a staff for the Experiment Station, were appointed and elected.

It is further alleged that said college has never received any appropriations, or other financial support from the State of Wyoming, or from any other source, except from the estate of Phillip Wisser as aforesaid; that the college is entitled to receive the appropriations under the acts of Congress aforesaid, and that it is the only institution in the state whose leading object is instruction in agriculture and the mechanic arts and, therefore, the only institution in said state entitled to receive the same; that the same have heretofore been paid to the University of Wyoming, which is located at Laramie; that said University is not an institution whose leading object is instruction in agriculture and the mechanic arts and is not and never has been eligible to accept and expend said federal appropriations, and that the payments of said federal appropriations to it as aforesaid have each and all been in direct violation of said acts of Congress; that said University has accepted and received from the government appropriations under said acts of Congress aggregating five hundred and fifty-five thousand dollars, and has graduated but two students from its department of agriculture and mechanic arts.

The passage of an act of the Legislature of Wyoming, approved February 7, 1905 (this act is set out in full, Printed Report, pp. 30, 31), is then alleged, which purports to repeal the act of January 10, 1891, and all laws establishing the relator college, and said repealing act is alleged to be unconstitutional, null and

void, for the reason that it impairs the obligations of a contract and divests vested property rights.

It is further alleged that the defendant in error (respondent below) has in his possession the sum of twenty-five thousand dollars, derived from the United States for the year 1905, under the act of August 30, 1890, aforesaid, to which sum the relator college is legally, equitably and justly entitled; that said college requires said amount of money in the maintenance and support of its department of instruction in agriculture and mechanic arts; that said respondent refuses to recognize its right to said fund, but asserts that the same belongs to said University, and will pay the same to said University, unless otherwise directed by said court; that said respondent also has in his possession, or loaned under his direction, permanent funds amounting to $20,415.34 derived from sales of lands and land scrip under said acts of Congress; that the relator college is legally entitled to all interest upon said funds, but said respondent denies the relator's right thereto, and asserts that the same belongs to said University, and, unless otherwise directed by said court, will pay the same to said University.

The prayer of the petition is that said respondent pay to the treasurer of the relator college each and all of the above named sums of money.

An alternative writ of mandamus was issued in accordance with the prayer of the petition (Printed Record, pp. 35, 36), to which writ the respondent failed to answer but interposed a demurrer to the petition, stating three grounds, viz.: (1) That the petition does not state facts sufficient to constitute a cause of action. (2) That the Wyoming Agricultural College is without legal capacity to sue. (3) That the trustees of said college are without legal capacity to sue. (Printed Record, page 38), which demurrer was sustained (Printed Record, page 70). The plaintiffs in error elected to stand upon their petition and alternative writ, and declined further to plead, and thereupon the court entered a final order dismissing the petition and alternative writ at the cost of relators, to which order, judgment and decree the relators duly excepted. (Printed Record, pages 70, 71).

The written opinion of the court will be found in Printed Record, pages 39 to 69, inclusive.

ERRORS ASSIGNED.

The errors assigned by the plaintiff in error (Printed Record, pages 3 to 6 inclusive), are as follows:

First. "The Supreme Court of the State of Wyoming erred in rendering a decision in said cause, sustaining the demurrer of the defendant to the petition and alternative writ of the plaintiffs."

Second. "The Supreme Court of the State of Wyoming erred in each and all its findings of law in its said decision and opinion, sustaining said demurrer, as aforesaid."

Third. "The Supreme Court of the State of Wyoming erred in entering final judgment in said cause, dismissing the plaintiffs' petition and alternative writ, at the cost of the plaintiffs."

Fourth. "The Supreme Court of the State of Wyoming erred in holding and deciding that Chapter Ten of the Session Laws of Wyoming for 1905, in words and figures following, to-wit:

"CHAPTER 10.

"REPEAL OF WYOMING AGRICULTURAL COLLEGE.

"*Be it Enacted by the Legislature of the State of Wyoming*:

"That Chapter 92 of the Session Laws of the State of Wyo-" ming of the years A. D. 1890-1891, being an act entitled 'An " Act providing for the establishment of "The Wyoming Agri-" cultural College," and to provide for the location and govern-" ment of the same, and for the instruction to be therein given, " and for other purposes,' approved January 10th, A. D. 1891; " and also so much of said act as is embraced in Sections 504 to " 519, both inclusive, of Chapter 2, Title 6, of the Revised Stat-" utes of Wyoming, 1899, entitled 'The Wyoming Agricultural " College,' be and the same are hereby repealed."

"This act shall take effect and be in force from and after its " passage."

"Approved February 7th, A. D. 1905."

was valid. The validity of said law was denied and drawn in question by the plaintiffs on the following grounds, to-wit:

a. That the said repealing act is unconstitutional and void, because it impairs the obligations of contracts and divests vested property rights and is in contravention of Section 10 of Article I of the Constitution of the United States.

b. That the said repealing act is illegal, null and void, because it violates the contract and agreement entered into between the State of Wyoming and the United States, in the Act of Admission of the State of Wyoming, wherein, by Section 10 of said act, in words and figures following, to-wit:

"Section 10. That 90,000 acres of land, to be selected and located as provided in Section 4 of this act, are hereby granted to said state for the use and support of an agricultural college in said state, as provided in the acts of Congress making donations of lands for such purpose,"

the State of Wyoming accepted donations of land for the Wyoming Agricultural College.

c. That the said repealing act is illegal, null and void, because it attempts to destroy the only college in the State of Wyoming, whose leading object is instruction in agriculture and the mechanic arts and is therefore in contravention of the provisions of the Acts of Congress providing for the support and maintenance of Agricultural Colleges, to-wit, the Act of July second, 1862, as amended by Act of March third, 1883; the Act of August thirtieth, 1890, and the Act of March second, 1887.

Fifth . The Supreme Court of the State of Wyoming erred in holding and deciding that The Wyoming Agricultural College and the trustees thereof were not legally entitled to receive the federal appropriations for the support of an agricultural college in the State of Wyoming, under the said federal statutes in such case made and provided.

Sixth. The Supreme Court of the State of Wyoming erred in holding and deciding that the defendant was legally and lawfully under said Acts of Congress, disbursing said federal appropriations for the support and maintenance of an agricultural college, to the University of Wyoming, the plaintiffs claiming in their said petition, and it being admitted by the defendant's demurrer, that the University of Wyoming is not an institution whose leading object is instruction in agriculture and the mechanic arts.

Seventh. The Supreme Court of the State of Wyoming erred in holding and deciding that the University of Wyoming is

an institution whose leading object is instruction in agriculture and the mechanic arts.

Eighth. The Supreme Court of the State of Wyoming erred in holding and deciding that the University of Wyoming is legally entitled to receive the federal appropriations claimed by plaintiffs in said cause.

Ninth. The Supreme Court of the State of Wyoming erred in holding that the plaintiffs were not legally entitled to receive the federal appropriations for the support and maintenance of an agricultural college in the State of Wyoming, as claimed in their said petition.

Tenth. The Supreme Court of the State of Wyoming erred in holding that Section 499 of the Revised Statutes of Wyoming, in words and figures following, to-wit:

"The University of Wyoming having been designated by the Secretary of the Interior as the proper institution to receive and expend the moneys appropriated by an Act of Congress approved August thirtieth, eighteen hundred and ninety, entitled 'An Act to apply a portion of the proceeds of the public lands to the more complete endowment and support of the colleges for the benefit of agriculture and the mechanic arts, established under the provisions of an Act of Congress approved July second, eighteen hundred and sixty-two,' until such time as there may be an agricultural college established in this State, separate and apart from said University of Wyoming, assent is hereby given to all the terms and conditions of the said Act of Congress and the grants of money authorized and made by said Act are hereby assented to and accepted by the State of Wyoming. The Treasurer of the State of Wyoming is hereby designated as the proper officer to accept and receive said moneys so granted by said Act of Congress, and to disburse the same in accordance with the provisions of Section two of the said Act of Congress,"

was valid. The validity of said last named statute was denied and drawn in question on the ground that it was repugnant to the laws of the United States providing for the maintenance and support of agricultural colleges, to-wit, the Act of July second, 1862, as amended by Act of March third, 1883; the Act of August thirtieth, 1890, and the Act of March second, 1887.

Eleventh. The Supreme Court of the State of Wyoming erred in holding and deciding that the defendant, William C. Irvine, as Treasurer of the State of Wyoming, was legally and lawfully, under said Section 499 of the Revised Statutes of Wyoming, disbursing the federal appropriation for the support of an agricultural college, to the University of Wyoming.

ARGUMENT.

FIRST. *The Wyoming Agricultural College is a corporation with capacity to sue, and its Trustees have corporate powers, among them the right to sue.*

"It is not necessary to the conclusion that a body exercising corporate powers is in the rightful exercise of them, that the body should have been declared a corporation by the legislature in expressed words. As hereafter seen, a corporation may exist by legislative recognition; and for stronger reasons, where there is a statute conferring upon an existing body powers which are appropriate to corporations alone, it is a sound conclusion that it makes it a corporation."

Cyclopedia of Law and Procedure, Vol. 10, 202, and cases there cited.

Every corporation, private or municipal, without regard to the end of which it is created, possesses, in the absence of language expressly restrictive, powers which have been found necessary to sue and be sued.

10 Cyclopedia of Law and Procedure, page 1098.

In general it may be said that the power to sue and be sued is, by the principles of the common law, an incident of every corporation.

The whole question in such cases is whether the party suing or being sued is indeed a corporation.

10 Cyclopedia of Law and Procedure, page 1337 and cases cited in note.

"A corporation may be formed in any manner that a state sees fit to adopt, and when the highest court of the state decides that, by certain legislation the corporation has been created, such decision concludes not only the court of the state but also those of the United States. It is a matter over which we have no review, and in respect to which the decision of the state court is final. If it were an open question, it would be difficult to avoid reaching the same conclusions. By the act of 1869 this prescribed portion of Shelby county is authorized to issue bonds in subscribed stock. The bonds when issued were not the bonds of Shelby county or of the individual taxpayers; and still there must be some debtor. That debtor is this portion of Shelby county giving the power to issue bonds in creating indebtedness, is the creation of entity with power to act, and if this entity has power to create a debt it becomes subject to suit. That this entity is not in terms named 'Corporation' is not decisive. It is enough that an artificial entity is, though not named, a corporation entity, and as well said by the Court of Appeals, simply designates who shall act for this corporation entity and give it a name. As a corporate entity, it issued bonds and subscribed to stock."

Hancock vs. Louisville Railroad Co., 145 U. S., 415.

"The Board of Directors of the University of Oregon are a corporation, although not specifically designated as such. The capacity and power to take conveyances of land and hold and dispose of them for the use and benefit of the University according to the various and diverse trusts imposed upon them by their donors, could not belong to said board unless incorporated. It is true the legislature has not declared the trustees to be a corporation in express terms but this is not essential."

Dunn et al. vs. State University, 9 Oregon, 361. Angel and Ames on Corporations, Section 46.
Thomas vs. Dakin, *22* Wend., 70.
In re Herman Royer, deceased, 44 L. R. A., 364 (Cal.)

"The implied powers of a corporation are those which naturally arise from the nature of the business, thus, a corporation has implied power to buy, hold and sell necessary real estate and other property in its corporate name, and to sue and be sued in that name."

First Cook on Corporation, 5th Edition, page 10.

"The right to sue and be sued is one of the inherent powers of corporations."

1st Blackstone's Commentaries, *278*.

The act providing for the establishment of the Wyoming Agricultural College contains the following provisions:

"Section 510. Para. 6. The said Board of Trustees shall have power to take and hold for the use and benefit of said Agricultural College any real or personal estate and to dispose of the same in such manner as they may deem most conducive to the interests of said Agricultural College."

"Section 515. In the management and application of any property, real or personal, granted, devised, or bequeathed to the use of said Agricultural College, or the proceeds thereof, the Trustees shall conform to the will and direction of the donor thereof, if any such directions shall have been connected with such grant, devise, bequest or donation."

Thus it will be seen that said Trustees were vested with absolute power to acquire, hold and dispose of real and personal property, and the right to sue and be sued is necessarily implied.

SECOND. *The petition in this cause states facts sufficient to constitute a cause of action.*

A State official may be compelled by the writ of mandamus to perform a ministerial duty.

State vs. Herd, 18 Southern, 1746.
State vs. Jumer, 30 (La.) Ann., 863.
Marbury vs. Madison, 1st Cranch, 137.
Wendall vs. United States, 12 (Peters), 60.
Board of Liquidation vs. McComb, 92 U. S., 541.
High on Extraordinary Legal Remedies, Secs. 10 and 105.
State vs. Gamble, 13 (Fla.), 9.
Bryan vs. Cattell, 15 (Ia.), 538.
Turner vs. Maloney, 13 (Cal.), 621.
State vs. Herd, 47 (La.) Ann., 1679; 18 Southern, 746.
United States, Goodrich vs. Guthrie, 17 Howard, 309.
Brashear vs. Mason, 6 Howard, 692.
Murberry vs. Madison, Cranch, 167.
United States vs. Shurz, 102 U. S., 378.
Butterworth vs. U. S., 112 U. S., 50.
United States vs. Black, 128 U. S., 40.
Cohens vs. Va., 6 Wheaton, 264.

In the specific relief which it affords, a mandamus operates much in the nature of a bill in chancery for specific performance, the principal difference being that the latter remedy is resorted to, for the redress of purely private wrongs, or the enforcement of contract right, while the former generally has this object, the performance of obligations arising out of official station or specifically imposed by law upon the respondent. The object of a mandamus is to prevent disorder from a failure of justice and a defect of police and it should be granted in all cases where the law has established no specific remedy and where in justice there should be one.

High, Extraordinary Legal Remedies, Sec. 1.

A comparison of a writ of mandamus, as now used both in England and America, with a writ of injunction, discloses certain striking points of resemblance. Both are extraordinary remedies, the one the principal extraordinary remedy of courts of equity, the other of courts of law.

High on Extraordinary Legal Remedies, Sec. 6.

Courts can not and will not shun the discussion of a constitutional question when fairly presented, and the case can not be disposed of without considering it.

Cooley on Constitutional Limitations, page 163.

When the officers against whom the writ is sought have clearly manifested a determination to disregard their duty by refusing to perform the act in question, the court is not obliged to wait until the evil is done before granting the relief.

Attorney General vs. Boston, 123 Mass., 460.
Brunswick vs. Dube, 59 Ca., 803.

The fact that the prayer is too broad will not defeat the relator's right entirely, but he will be granted such relief as he is entitled to.

13 Enc. Pl. & Prac., 684.
Iowa Coms. vs. Jackson, 165 Ill., 17.
Satterwhites vs. Stole, 142 Ind., 1.
Ellsworth vs. Borwart, 95 Iowa, 108.
People vs. Queens Co., 142 N. W., 271.
State vs. Crites, 48 St., 142.
Smith vs. Lawrence, 2 S. Dak., 188.
Fisher vs. Charleston, 17 W. Va., 628.

Section 2 of 1890 Morrill law provides as follows:

"Sec. 2. That the sums hereby appropriated to the States and Territories for the further endowment and support of colleges shall be annually paid on or before the 31st day of July of each year by the Secretary of the Treasury, upon the warrant of the Secretary of the Interior out of the Treasury of the United States, to the Territorial Treasurer, or to such officers as shall be designated by the laws of such State or Territory to receive the same, who shall, upon the order of the Trustees of the colleges or the institutions for colored students, immediately pay over said sums to the Treasurer of the respective colleges or other institutions entitled to receive the same, and such Treasurers shall be required to report to the Secretary of Agriculture and to the Secretary of the Interior, on or before the first day of September of each year, a detailed statement of the amount so received and of their disbursements."

Section 499 of the Revised Statutes of Wyoming, designates the State Treasurer as the proper officer to accept and receive the moneys granted by said acts of Congress and directs that he disburse the same in accordance with the provisions of Section 2 of said act of Congress, and this is the only direction in said statutes relative to said officer's disposition of said Morrill fund.

Thus it will be seen that the State Treasurer in receiving and disbursing said funds acts as the agent of both the State and the Government and in a purely ministerial capacity.

The act providing for the establishment of the Wyoming Agricultural College is in the nature, and has the full force and effect of an expressed direction by the Legislature to said Treasurer to pay said Morrill appropriation to said Agricultural College when the same shall be located by a vote of the people; especially so when construed in connection with said Section 499 of the Revised Statutes, which limits the University's rights to said funds "until such time as there may be an Agricultural College established in this State separate and apart from said University of Wyoming"; and construed further in connection with the express limitations and directions contained in the act of Congress itself defining the kind of educational institutions entitled to said appropriation, and directing the State Treasurer to turn said appropriations over to said beneficiary.

It is alleged in the petition and admitted by the demurrer that the principal object of the University is not now and never has been instruction in agriculture and the mechanic arts; on the face of the petition the Wyoming Agricultural College is clearly entitled to said appropriation and to the issuance of the writ prayed for in this case.

It will be observed with reference to the Morrill fund that while the State is burdened with some of the responsibilities of a Trustee it is not vested with any of the power or discretion of an ordinary Trustee, except the possible discretion, where there are two educational institutions in the State eligible to receive said funds, to apportion said funds between said institutions.

But where there is only one institution in the State whose principal object is instruction in agriculture and the mechanic arts, the Legislature has no possible discretion or control over said funds except to see that they are paid. The fund is paid by the Government direct to the State Treasurer, who is directed to immediately pay over said funds upon the order of the Trustees of the colleges to the treasurer of the respective colleges or other institutions entitled to receive the same, and further directs that such treasurer shall be required to report to the Secretary of Agriculture and to the Secretary of the Interior on or before the 1st day of September of each year a detailed statement of the amount so received and of its disbursement, thereby impressing a trust in favor of the Government on said funds even in the hands of the treasurers of the colleges.

We are unable to conceive how this can be construed as an appropriation to the State; as a matter of form the appropriation is made to the State for the purpose of segregating the general fund created by said act of Congress, among the several States; but the special provisions and limitations contained in the act itself and the manner in which the fund is paid, and the control which the Government assumes over it after it has been paid, clearly establish a gift to the College and not to the State; under the most liberal construction of this act of Congress, the State could only be regarded as a naked trustee and the college the unlimited beneficiary of said funds.

In this connection, we desire to draw the attention of the Court especially to the following fact: That the position of Wyo-

ming with respect to the agricultural funds is entirely different to the position of the older States, with respect to such funds, in this, that when the Federal Act was passed granting the agricultural funds, the older States' Constitutions had already been adopted, and had no reference to such fund, neither had the act of admission of the older States any reference to such funds, and, therefore, these funds were donated by the Federal Government to the older States, subject to distribution in accordance with any law passed by their Legislatures. The position of Wyoming with respect to said funds is that its Constitution and its admission took place subesquent to the passage of the Federal Act, and the State of Wyoming is bound by the terms of the contract with respect to said funds, created by its Constitution and its Act of Admission, and the same can only be disposed of in accordance with the terms of such contract, which, as we have shown in this brief, must go to the college whose principal object is the teaching of agriculture and the mechanic arts; and, as we have already shown, it is clear that the Agricultural College Act was passed and the Agricultural College established in pursuance of this contract and in order to utilize said funds by a compliance with the Statutes of the United States; and that said College was established under a constitutional provision, by vote of the people. The Legislature, having performed this duty, has exhausted its power in the premises and the act is irrevocable by them.

THIRD. *The Legislature of Wyoming has not the power to single out and repeal the charter of a particular corporation, in the absence of wilful neglect or abuse of its charter.*

Section 1 of Article 10 of the Wyoming Constitution provides:

"Section 1. The Legislature shall provide for the organization of corporations by general law. All laws relating to corporations may be altered, amended or repealed by the Legislature at any time when necessary for the public good and general welfare, and all corporations doing business in this State may as to such business be regulated, limited or restrained by law not in conflict with the Constitution of the United States."

This reservation applies solely to corporations of legislative creation and to amendments and repeals of laws affecting all cor-

porations alike and does not extend to corporations established under a constitutional provision by the vote of the people. The right to repeal the charter of a private corporation solely of legislative creation would, we believe, be subject to the limitation that such repeal shall not impair the obligations of contracts or divest vested property rights. It could not be made to apply to a special charter like that of the Wyoming Agricultural College in any event unless such right were reserved in the charter itself.

The Wyoming Agricultural College was not and could not be a burden to the State, for there is no obligation on the part of the State to support it. The public welfare could never demand that an educational institution of this kind should be destroyed and its private funds confiscated by the State. But in any event, this reservation to repeal the corporation laws must be construed in the light of Section 2 of Article 10 of said Constitution, which provides:

"Section 2. All powers and franchises of corporations are derived from the people and are granted by their agent, the government; for the public good and general welfare, and the right and duty of the State to control and regulate them for these purposes is hereby declared. The power, right and privileges of any and all corporations may be forfeited by wilful neglect or abuse thereof. The police power of the State is supreme over all corporations as well as individuals, which does not give the Legislature power to single out and repeal the charter of a particular corporation in the absence of wilful neglect or abuse of its charter."

The effect of this reservation to the Legislature to alter, amend or repeal a charter, has been construed by the Supreme Court of the United States in several cases, as follows:

"A power reserved to the Legislature to alter, amend or repeal a charter, authorizes it to make any alteration or amendment of a charter granted subject to it, which will not defeat or substantially impair the object of the grant, or any rights vested under it and which the Legislature may deem necessary to secure either that object or any public right."

N. W. & N. E. R. Co. vs. Bristol, 151 U. S., 567.
Looker vs. Maynard, 179 U. S., 52.

Vested rights cannot be destroyed or impaired under such a reserved power.

Holyoke Company vs. Lyman, 15 Wal. (U. S.), 519.

These are the acknowledged limits to the exercise of this reserved power where it trenches upon vested rights or rights of property of the corporation.

When under power in a charter rights have been acquired and become vested, no amendment of the charter can take away the property or rights which have become vested under the legitimate exercise of the powers granted.

Miller vs. the State, 15 Wal. (U. S.), 486.
Commonwealth vs. Essex Co., 13 Gray, 239.
Durfee vs. Old Colony Railroad, 5 Allen, 236.
Roxbury vs. Boston Prov. Railroad, 6 Cushing, 424.

In Detroit vs. Howell Plank Road Co., 43 Mich., 140, 147, the Supreme Court of Michigan, in considering this subject, uses similar language. Speaking by Mr. Justice Cooley, it said:

"But for the provision of the Constitution of the United States which forbids impairing the obligation of contracts, the power to amend or repeal corporate charters would be ample without being expressly reserved. The reservation of the right leaves the State where any sovereignty would be, if unrestrained by express constitutional limitations and with the powers it might then possess. It might, therefore, do what it would be admissable for any constitutional government to do when not thus restrained, but it could not do what would be inconsistent with constitutional principles. And it cannot be necessary at this day to enter upon a discussion in denial of the right of the government to take from either individuals or corporations any property which they rightfully may have acquired. In the most arbitrary times such an act was recognized as pure tyranny, and it has been forbidden in England ever since Magna Charta; in this country always."

It is immaterial in what way the property was acquired, whether by labor in the ordinary vocations of life, by gift or descent, or by making profitable use of a franchise granted by the State.

FOURTH. *Under the Constitution and Statutes of Wyoming, the University of Wyoming has no vested interest in the Morrill and Hatch appropriations.*

Section 15 of Article 7 of the Wyoming Constitution provides as follows:

"The establishment of the University of Wyoming is hereby confirmed and said institution, with its several departments, is hereby declared to be the University of the State of Wyoming. All lands which have been heretofore granted or which may be granted hereaftr by Congress unto the University as such, or in aid of instruction to be given in any of the departments, with all other grants, donations or devices for said University, or for any of its departments, shall vest in said University and be exclusively used for the purposes for which they were granted, donated or devised."

This provision of the Constitution cannot by the most strained construction be construed to give to the University or its Agricultural Department a vested right, title and interest in the "Morrill" and "Hatch" funds. It plainly has reference to the grant of lands in the foregoing Act of Congress to the State for University purposes, and future donations made specifically to the State for University purposes.

The provisions of the Hatch and Morrill laws negative the idea that they are given for the benefit of the University, or that said institution shall acquire a vested and permanent right and title to said appropriations.

It is important to observe that the University, although organized in 1886, at the time of the adoption of the Constitution, was not receiving or making any claim to the Hatch or Morrill funds, and never did receive or lay any claim thereto until after the passage of the act providing for the establishment of the Wyoming Agricultural College in 1891.

The legislative construction placed on the tenure of the University to these funds is of almost controlling force. In all the legislation in regard to said funds, the right of the University as the recipient thereof is regarded as a transient one, to continue only until a separate agricultural college should be established. Thus in Section 499 of the Revised Statutes of Wyoming the right of the University to receive said funds is limited by the following language:

"Until such time as there may be an agricultural college established in this State, separate and apart from said University of Wyoming."

Section 520 of the Revised Statutes of Wyoming, as amended by Chapter 14, of the Session Laws of 1901, and again amended by the Session Laws of 1903, contains the following language:

"During such time as the University of Wyoming shall be and remain the recipient of the funds donated by the United States Government to the State Under the Act of Congress of March 2, 1887, establishing agricultural experiment stations and the Act of Congress of August 30th, 1890," etc.

Construing this constitutional provision also in the light of the Act of Admission, which distinctly recognizes the University and the Agricultural College, the conclusion is unavoidable that the University has acquired thereby no exclusive, permanent or vested right, title or interest in and to said Morrill and Hatch appropriations.

FIFTH. *The Wyoming Agricultural College is a private corporation.*

A corporation may be private and yet the act or charter contain provisions of a purely public character introduced solely for the public good. A public corporation is one that is created for political purposes with political powers to be exercised for purposes connected with the public good in the administration of civil government where the whole interests belong to the government.

State vs. Carr, 111 Ind., 355; 12 N. E., 318.
Downey vs. Ind. State Bd. Agriculture, 129 Ind., 443; 12 L. R. A., 664.
Bd. of Educ. vs. Bakewell, 122 Ill., 339; 10 N. E., 378.
Trustees Part. Col. vs. Woodward, 4 Wheaton, 523.
City of Louisville vs. Univ. of Louisville, 54, 642.
Allan vs. McKean, I Summer (Maine), 276.
Regents Univ. Md. vs. Williams, 9 Gill & John. (Md.), 365.
U. S. Bank vs. Planters' Bank (Ga.), 9 Wheaton, 907.
State Bank S. C. vs. Gibbs, 3 McCord, 226.
Sclinas vs. State Ag. Col., 60 Vt., 249.
Bd. of Educ. vs. Greenbaum, 39 Ill., 610.
Cleveland vs. Stewart, 3 Ga., 283.
Trustees of N. C. vs. Fay L. Murphy, N. C., 81.

SIXTH. *Public corporations are regarded as private corporations with reference to their private property.*

"It will hardly be contended that even in respect to public corporations the legislative power is so transcendent that it may at its will take away the private property of the corporation or change the uses of its private funds acquired under the public faith."

Trust. Dart. Col. vs. Woodward, 4 Wheaton, 523.

Even municipal corporations are deemed private corporations with respect to the ownership and control of private or corporate property, as distinguished from property devoted strictly to public or governmental uses.

Bullmaster vs. St. Joseph, 70 Mo. App., 60.

Whitfield vs. Carrolton, 50 Mo. App., 98.

Milburn vs. South Orange, 55 N. J. L., 254; 26 Atl., 75.

Bailey vs. N. Y., 3 Hill, 531; affirmed in 2 Dem. (N. Y.), 433.

Bloodgood vs. Mohawk R. R. Co., 18 Wend. (N. Y.), 931; Am. Dec., 313.

Oliver vs. Worcester, 102 Mass., 489; 3 Am. Rep., 485.

McCauley vs. New York, 67 N. Y., 60.

Memphis vs. Kimbrough, 12 Heish (Tenn.), 133.

Sayd vs. New York, 5 N. Y., 369; 55 Am. Dec., 347.

Bailey vs. Mayor, ek sf., N. Y., 38.

Rochester, etc., Co. vs. Rochester, 53 Am. Dec., 316.

Holland vs. San Francisco, 7 Cal., 376.

Stackinghouse vs. Lafarette, 26 Ind., 17.

Bunkmeyer vs. Evansville, 29 Ind., 187.

People vs. Mayor, etc., of N. Y., 62 N. Y., 164.

Same vs. same, 32 Barb., 116.

Town of Milwaukee vs. City of Milwaukee, 12 Wis., 111.

In the last quoted decision (12 Wis., 111) the Court said:

"The difficulty about the question is, to distinguish between the corporation as a civil institution or delegation of merely political power, and as an ideal being, endowed with the capacity to

acquire and hold property for corporate purposes. In its political or governmental capacity, it is liable at any time to be changed, modified or destroyed by the Legislature; but in its capacity of owner of property designed for its own, or the exclusive use and benefit of its inhabitants, its vested rights of property are no more the subject of legislative interference or control, without the consent of the corporators, than those of a merely private corporation or person. Its rights of property, once acquired, though designed and used to aid it in the discharge of its duties as a local government, are entirely distinct and separate from its powers as a political or municipal body. It might sell its property, or the same might be lost or destroyed, and yet its powers of government would remain. In its character of a political power, or local subdivision of government, it is a public corporation, but in its character of owner of property, it is a private corporation, possessing the same rights, duties and privileges as any other. This distinction is clearly laid down and established in the case of Bailey and others vs. The Mayor, etc., of the City of New York, 3 Hill, 531, and authorities there cited. The inviolability by legislative interposition of the rights and franchises of a private corporation, in cases where there is not, by its charter, or the Constitution of the State by which it is granted, a reservation of power to repeal or modify, is demonstrated and established in the case of Dartmouth College vs. Woodward, 4 Wheat., 518, by a force of reasoning and power of argument, to the strength and clearness of which nothing can possibly be added. It was there held that the charter of such a corporation was a contract within the meaning of the first subdivision of Section 10 of Article 1 of the Constitution of the United States, which declares that no State shall pass any laws impairing the obligation of contracts. The same provision occurs in the 12th section of the 1st article of our State Constitution. The reasoning of that case extends as well to the power of the Legislature to interfere with the franchises as the rights of property of such corporation; but it is only with respect to the latter that it can be considered applicable to the question we are now considering. And there it is clearly so. Every argument used goes with equal force to prove that the Legislature has no power to divest a municipal corporation of its property, previously acquired by purchase or otherwise. This want of power depends, not upon the character of the corporation, but upon the nature of the right. The right to repeal or modify is not a right to interfere with vested rights of property. The former may exist without the latter. If the Legislature possessed both, the exercise of one would not depend on the other. How the total repeal of the charter of a municipal corporation, without provision as to the deposition of its property (a circumstance not likely to occur) would affect such prop-

erty, or the rights of its inhabitants, we are not called upon here to decide. It is sufficient that the corporation of the Town of Milwaukee still continues to exist and so long as it does so, it is impossible to make a distinction between its rights of property and those of a corporation merely private. Both are, and ought, in the nature of things, to be equally sacred. In Terrett vs. Taylor, 9 Cranch, 43, the right of a State Government to dispossess a private corporation of its property, was directly passed upon and denied."

SEVENTH. *The Act of the Legislature of Wyoming in 1905 repealing the charter of the Wyoming Agricultural College is in contravention of the compact and agreement entered into between said State and the United States, in the Act admitting said State into the Union.*

The Constitution of Wyoming was adopted by the people at a general election held November 5th, 1889.

It was submitted to Congress and approved by that body at the time the Act of Admission of the State of Wyoming was approved, to-wit, on July 10th, 1890.

The Act of Admission, being the solemn compact between the State and the Government, its terms are of controlling force in construing any dubious provisions of the Constitution of Wyoming.

Section 10 of said Act of Admission is in words and figures following, to-wit:

"Section 10. That 90,000 acres of land, to be selected and located as provided in Section 4 of this act, are hereby granted to said State, as provided in the acts of Congress, making donations of land for such purpose."

Section 11 of said Act of Admission provides as follows:

"Section 11. The following grants of land are hereby made, to-wit:

"To the State of Wyoming: For State, Charitable, Educational, Penal and Reformatory Institutions, 260,000 acres."

Section 8 of said Act of Admission provides:

"Section 8. That the lands granted to the Territory of Wyoming, by the Act of February 18, 1881, entitled, "An act to grant lands to Dakota, Montana, Arizona, Idaho, and Wyoming for university purposes," are hereby vested in the State of

Wyoming to the extent of the full quantity of 72 sections to said State, and any portions of said lands that may not have been selected by said Territory of Wyoming, may be selected by the said State; but said Act of February 18th, 1881, shall be so amended as to provide that none of said lands shall be sold for less than $10.00 per acre and the proceeds shall constitute a permanent fund to be safely invested and held by said State and the income thereof be used exclusively for university purposes. The schools, colleges and universities provided for in this act shall forever remain under the exclusive control of the said State, and no part of the proceeds arising from the sale or disposal of any lands herein granted for educational purposes shall be used for the support of any sectarian or denominational school, college or university."

Thus Congress expressly recognizes the University and grants donations for university purposes and expressly recognizes the Agricultural College to be thereafter established in this State and grants to the State 90,000 acres of land for the use and support of same. The congressional mind at this time recognized an Agricultural College in Wyoming separate and distinct from the University and evinced a fatherly interest in its welfare; and the State of Wyoming in accepting the grant for the use and support of an Agricultural College, solemnly obligated itself to establish an Agricultural College, which when established could not be destroyed by the Legislature.

The State of Wyoming further ratifies and reiterates its solemn pledge and obligation contained in the Act of Admission in the following language contained in Section 1 of Article 18 of the Wyoming Constitution:

"Article 18. Section 1. The State of Wyoming hereby agrees to accept the grants of lands heretofore made, or that may be hereafter made by the United States to the State for educational purposes, for public buildings and institutions and for other objects and donations of money, with the conditions and limitations that may be imposed by the act or acts of Congress, making such grants or donations."

EIGHTH. *The Act of the Wyoming Legislature in 1905 repealing the charter of the Wyoming Agricultural College impairs the obligations of a contract and divests vested property rights, and is, therefore, in contravention of the Constitution of the United States and ineffective and void.*

The Act of the Legislature of Wyoming providing for the establishment of the Wyoming Agricultural College (Printed Record, pages 22 to 26) expressly provides that the Trustees thereof shall have the power to take and hold for the use and benefit of the said Wyoming Agricultural College any real or personal estate and to dispose of the same in such manner as they may deem most conducive to the interests of said Agricultural College, and to expend any and all income that may be placed under the control of such board by donations or by law or otherwise in such manner as shall best promote the interests and property of the said institution, and further provides that in the management and application of any property, real or personal, granted, devised or bequeathed for the use of said Agricultural College, or the proceds thereof, the Trustees shall conform to the will and directions of the donor thereof, if any such directions shall have been connected with such grant, devise, bequest or donation, thereby investing said institution in these particulars with powers strictly of a private character and holding out a shining guaranty of good faith and inviolability to those whom local pride or interest might prompt to bestow valuable gifts and financial assistance upon said institution, and thereby creating—especially after private donations have been made specifically to said institutions as located, on the faith of the character, with express directions as to how said donations sould be expended—a binding contract between the State on the one hand and said institution and said donors on the other, based upon a valuable consideration; a contract on the faith of which real and personal property has been donated to said institution; and that, therefore, said pretended repealing act of 1905 is unconstitutional and void as being in contravention of the Constitution of the United States, which provides that "No State shall pass any * * * law impairing the obligation of contracts."

The effect of this constitutional prohibition early became a subject of consideration in the Supreme Court of the United States. Out of it grew the decision in perhaps the most famous case ever decided in any Court of the United States, namely, the Dartmouth College case. That case involved questions somewhat similar to those under consideration. The facts in that case were in many rspects similar to the questions here involved. It ap-

pears in that case that in 1769 a charter was granted by the English Crown to twelve persons, incorporating them under the name of "Trustees of Dartmouth College"; that, under this grant, the Trustees were to govern the college and fill all vacancies which might be created in their own number; that, after the War of the Revolution in 1816, the Legislature of New Hampshire passed an act which provided, among other things, for an increased number of Trustees, provided for their appointment by the Governor, created a Board of Overseers, and purported to make other important changes in the organic law of the institution. Chief Justice Marshall, in his opinion, says:

"The points for consideration are: (1) Is this contract protected by the Constitution of the United States? (2) Is it impaired by the acts under which the defendant holds?"

These questions he considers in a most elaborate opinion, covering more than forty pages of the printed report, which is entirely too long to be even quoted or recapitulated here. A few quotations, however, will show the substance of the decision and the applicability of it to the questions here under consideration:

"The parties in this case differ less on general principles, less on the true construction of the Constitution in the abstract than on the application of those principles to this case, and on the true construction of the charter of 1769. This is the point on which the case centrally depends. If the act of incorporation be a grant of political power, if it create a civil institution to be employed in the administration of the Government, or if the fund of the college be public property, or if the State of New Hampshire as a government be alone interested in these transactions, the subject is one in which the Legislature of a State may act according to its own judgment, unrestrained by any limitation of its power imposed by the Constitution of the United States, but if this be a private eleemosynary institution, endowed with the capacity to take property for objects unconnected with government, whose funds are bestowed by individuals on the faith of the charter; if the donors have stipulated for the future disposition and management of those funds in the manner prescribed by themselves, there may be more difficulty in the case."

The Court in its opinion distinguishes corporations into public corporations and private corporations. Public corporations are those created for public, governmental purposes, and are to be regarded as merely the agencies of the State in the adminis-

tration of civil government. The charters of such corporations may, under certain limitations, be repealed and such corporations abolished. Private corporations are established for private purposes and, unless the power to revoke their charters is expressly reserved in the acts creating them, the power of revocation does not exist. It appeared in the Dartmouth College case that the funds for the administration of the college were derived entirely from private sources. The State of Wyoming has never made any contribution toward the fund of the Wyoming Agricultural College, nor has it bound itself in its legislative enactments to furnish financial aid or assistance to said College. On the contrary, the only funds which it has are those which it derived from the estate of Phillip Wisser, deceased, or to which it has become entitled under the legislation and the statutes known as the Morrill and Hatch laws. But even had the State of Wyoming made appropriations and contributed funds for the administration of this school, that fact would be unimportant, in view of all the other facts and circumstances of this case. Questions similar to these have arisen in some of the other cases hereinbefore mentioned and referred to hereafter, and it will be seen that the fact that the State contributed a portion of the fund was not considered material, and that in those cases—as well as in the Dartmouth College case—the conclusion as reached by the Court after the most careful consideration, that the repeal of such a charter was not within the power of the Legislature. Chief Justice Marshall, in the opinion already quoted, says among other things as one of the grounds for his conclusion:

"Nor could the Legislature have supposed that his 'Doctor Wheelocks' private fund, and those given by others were subject to legislative management because they were applied to the purpose of education.

"The Trustees, in whose care the fund was placed by the contributors, would have been permitted to execute their trust, uncontrolled by legislative authority."

The opinion further says, referring to the right to change charters of public corporations:

"The right to change them is not founded upon their being incorporated, but upon their being the instruments of government, created for its purpose.

"From this view of the charter it appeared that Dartmouth College is an eleemosynary institution, incorporated for the purpose of perpetuating the application of the bounty of donors to the specified objects of said institution; that its Trustees or Governors originally named by the founder and invested with a power of perpetuating themselves; that they are not public officers, nor is it a civil institution participating in the administration of government, but a charity school or seminary of education, incorporated for the preservation of its property and the perpetual application of that property to the objects of its creation.

"According to the theory of the British Constitution, its parliament is omnipotent. To annul corporate rights might shock public opinion, which that Government has chosen to avoid, but its power is not questioned. Had Parliament, immediately after the emanation of this charter and the execution of these conveyances which followed it, annulled the instrument, so that the living donors would have witnessed the disappointment of their hopes, the perfidy of the transaction would have been universally acknowledged. Yet then, as now, the donors would have had no interest in the property; then as now, those who might be the students would have had no right to be violated; then, as now, it might be said that the Trustees, in whom the rights of all were combined, possessed no private, individual, beneficial interest in the property confided to their protection. Yet the contract would at that time have been deemed sacred by all. What has since occurred to strip it of its inviolability? Circumstances have not changed it. In reason, in justice, and in law, it is now what it was in 1769. This is plainly a contract to which the donors, the Trustees and the Crown (to whose rights and obligations New Hampshire succeeds) were the original parties. It is a contract made on a valuable consideration. It is a contract for the security and disposition of property. It is a contract on the faith of which real and personal property estate has been voted to the corporation. It is, then, a contract within the letter of the Constitution, and within its spirit also. The opinion of the Court, after mature deliberation, is that this is a contract, the obligation of which can not be impaired without violating the Constitution of the United States. This opinion appears to be equally supported by reason and by the former decisions of this Court."

Dartmouth College vs. Woodward, 4 Wheaton, pages 518 to 715.

Judge Story, in his opinion in the case, among other things said:

"Public corporations are generally esteemed such as exist for public political purposes only—such as towns, cities, parishes, and counties; and in many respects they are so although they possess some private interest. But, strictly speaking, public corporations are such only as are founded by the Government for public purposes where the whole interests belong also to the Government. If the foundation be private the corporation is private, however extensive may be the uses to which it is devoted."

Dartmouth College vs. Woodward, 4 Wheaton, pages 668 and 669.

But the legislative power over public corporation has its limitation. In the Dartmouth College case, at page 523, the Court says:

"It may also be admitted that corporations for mere public government, such as towns, cities and counties, may in many respects be subject to legislative control. But it will hardly be contended that, even in respect to such corporations, the legislative power is so transcendent that it may, at its will, take away the private property of the corporation or change the uses of its private fund acquired under the public faith. Can the Legislature confiscate to its own use the private funds which a municipal corporation holds under its charter without any default or consent of the corporators? If a municipal corporation be capable of holding devises and legacies to charitable uses (as many municipal corporations are), does the Legislature under our forms of limited government possess the authority to seize upon those funds and appropriate them to other uses at its own arbitrary pleasure against the will of the donors and donees? From the very nature of our Government the public faith is pledged the other way; and that pledge constitutes a valid compact and that compact is only subject to judicial inquiry, construction and abrogation."

Trustees Dartmouth College vs. Woodward, 4 Wheaton, 523.

Another case of interest and authority in this connection is that of *The City of Louisville vs. President and Trustees of the University of Louisville*, 54 Kentucky, 642. It appeared in this case that there existed an institution incorporated by the State of Kentucky, known as the "President and Trustees of the University of Louisville"; that almost the entire endowment of this institution had been received from a quasi public source, namely, from the City of Louisville; that certain individuals had, how-

ever, made small contributions of books and money; that, under this charter, the University was in successful operation during a period of several years. Finally, in the year 1851, an act was passed by the Legislature, which undertook, among other things, not only to make radical changes in the method of the administration of the University, but to transfer its property to another corporation, and to terminate the existence of the University of Louisville. This new corporation, or quasi corporation, was, "The Board of Trustees of the University and Public Schools of Louisville." It was provided by this act, among other things, that the number of Trustees should be changed from eleven to sixteen; that their method of election was changed; that the disposition of the profits and revenues were subjected to a different control, and that the existence of the corporation itself was to be terminated, all merely by legislative enactment.

Subsequently, the Trustees of the new institution filed a petition in the Circuit Court, setting forth the above and other facts, and asking that the President and Trustees of the University of Louisville (the former corporation) be decreed to surrender the said University to the Trustees elected under the new charter. The former Trustees resisted the action, and the case came up for review in the Supreme Court of Kentucky. The opinion in this case was rendered by Chief Justice Marshall of that Court, and in a long and very able examination of the questions involved, he reached the conclusion that the act was unconstitutional; that the first named corporation was a private and not a public corporation; that its charter amounted to a contract between the State and the institution, which was not subject to repeal by legislative act, and that the act which undertook to repeal this charter was in violation of those provisions of the Constitution of the State of Kentucky and of the United States, which prohibited legislation impairing the obligation of contract.

It will, therefore, be seen that this case is, in many respects, closely analagous to the case under consideration. It will be observed that the endowment in this case consisted from funds derived from the City of Louisville, which afforded more ground for argument that it was a public corporation, than exists in the present case, in as much as the funds of the Wyoming Agricultural College have not been at all derived from the State of Wyo-

ming, but from the charity of private donors and from the bounty of the United States.

Chief Justice Marshall, in discussing these questions, among other things, says in his opinion:

"If, as reason and observation prove, and as the authorities referred to assume, a municipal corporation may acquire property which does not thereby belong to the State, and may appropriate it to uses which the State can not defeat or control, it is not, in such acts of acquisition and appropriation, the mere instrument or agent of the government representing and acting for it, and these acts, though done under the authority of law, can not be regarded as the acts of the State or its government, or as a part of its administration, nor can they of themselves impart that character to the object of the appropriation, nor subject it to a legislative power which did not attach either to the objects of the appropriation or the property itself before it was thus appropriated; but such property, so far as the State is concerned, has all the attributes and is entitled to all the protection of private property.

The property conveyed did not become public property and subject to the will of the State by being conveyed to the University unless that institution was itself a mere instrument and agent of the State, and a public corporation. And it being certain that neither the fact of its being incorporated by the State, nor the fact that it was incorporated for the accomplishment of objects of general or public interests, made it a public corporation, subject as such to the public will and judgment; the question still recurs, why must this institution, founded and maintained by means not derived from the State, and in which the State had no other interest and apparently no other control than in any and all other incorporated institutions, be regarded as a public corporation, and in virtue of that name and character be debarred from the protection which the constitution affords to private corporations? Is it because it was incorporated and endowed with a special view of promoting education?

"It is said that the promotion of education is a proper object and duty of government as well as of individuals; and it is argued that the University, having been incorporated and endowed for the promotion of education, and in performance or pursuance of this duty, was an institution created for the purposes of government and to be employed in its administration; and it is contended that on this ground, the corporation was properly subject, under the rules before considered, to the unrestrained power of the State, or at least to the joint and cooperative will of the State and the City of Louisville. But here

again we must discriminate between which created and the city, which, wtih its own property, endowed this corporation. The single act of incorporating the University was not such an assumption by the government of the duty of education as made the corporation its instrument or agent for the performance of that governmental duty. It was only the creation of an instrument to be adopted and employed by others for the purpose of promoting education. And no other power resulted to the State from the nature of the object to be accomplished than such as results in other cases in which a corporation created for purposes of general interest is furnished by the State with powers and capacities, and subjected to contingent duties, but for the means of exercising its powers and performing its duties is left wholly dependent upon contribution or money or property to be made by others, either gratuitously or with a view to profitable return.

"It is conceded, however, that if the State alone on the one side, and the City of Louisville on the other were parties to and interested in the obligations arising from the charter and the donation, they might mutually release or modify these obligations as they might think proper. But the corporation itself created by the charter to receive donations and to appropriate them to purposes of general as well as of local interest, was a party both to the donation and to the grant of the corporate franchise, each of which was consummated by acceptance. And even if the mere acceptance of the franchise, which, if there be no property, or other object of value involved, might impose only a contingent duty, did not bind the faith of the State, to its continuance, the making and acceptance of a substantial donation, whereby property became involved in the charter, and actual and immediate duty were imposed upon a crporation and assumed by it, must, unless the corporation be of such a character and bear such relation to the State as that a donation to it is in effect a donation to the State, have imposed upon the State an obligation to continue the corporation with the capacities which enabled it to receive a gift, and to assume the correlative responsibilities and to perform the corresponding duties. The charter promises this continuance not only to donors to give up on its invitation, but to the corporation itself, which is made the instrument of inviting and receiving the gifts. And as the donation makes a promise binding in favor of the donor, so the assumption and performance of the consequent duty on the part of the incorporated donee is of sufficient consideration to make the promise obligatory in its favor. And, although the corporation, as an artificial being, may have no interest or merit which should raise this obligation in its benefit, it is to be recollected that it is the chosen trustee both of the State and of the donors for accomplishing all the objects of the charter, and the peculiar representative of all who are to re-

ceive the benefit of its faithful execution. Clothed with these interests, whose importance, as admitted by all, and as attested by the charter and by the endowment, deserves the highest consideration, it is not only capable but meritorious party to the contract by which its rights and duties are defined and protected.

"The material question, however, is whether this corporation stands upon the stable basis of a contract protected by the Constitution of the United States, or whether it is a public corporation subject to the unrestrained legislation of the State. We have upon this question subjected it to the tests furnished by the case of Dartmouth College vs. Woodward, according to our understanding of the principles of that case.

"We are of opinion, therefore, upon the ground of authority as well as of reason, that the original charter of the University of Louisville creates a private corporation, which is protected by that clause of the Constitution of the United States which prohibits the enactment of laws impairing the obligation of contracts; and that so much of the amended charter of the City of Louisville, of 1851, as relates to the pre-existing corporation and charter of the University, and vests or professes to vest in a new corporation, or new Trustees, the property and privileges of the original corporation, is in violation of that constitutional provision and consequently void."

City of Louisville vs. President and Trustees of University of Louisville, 54 Ky., 642 et seq.

The case of *Allen vs. McKean*, 1 Sumner (Maine), 276, is another authority of great weight upon the questions here involved. The questions under consideration (which we shall not undertake to enumerate) were in many respects similar to those here involved. The opinion in that case was written by Judge Story and is entitled to great weight. In his opinion he says, among other things:

"But, strictly speaking, public corporations are such only as are founded by the Government for public purposes, *where the whole interest belong to the Government.* If, therefore, the foundation be private, though under a charter of the Government, the corporation is private, however extensive the uses may be to which it is devoted, either by the bounty of the founder or the nature and objects of the institution. For instance, a bank, created by the Government for its own use, whose stock is owned exclusively by the Government for general charity" (meaning as is obvious from the context, a hospital like the navy hospital, or the general marine hospital, established and supported by the

United States out of its own funds and over which it retains the entire government), "but a bank whose stock is owned by private persons" (to it might have been added, partly by private persons and partly by the Government), "is a private corporation, although it is erected by the Government and its objects and operations partake of a public nature."

And it is further stated that no authority exists in the Government to regulate, control or direct a corporation, or its funds, "except where the corporation is, in the strictest sense, public; that is, where its whole interests and franchises are the exclusive property and domain of the Government itself."

That a college, merely because it received a charter from the Government, though founded by private benefactors, is not thereby constituted a public corporation, controllable by the Government, is clear beyond any reasonable doubt. So the law was understood by Lord Holt in his celebrated judgments in Phillips vs. Bury (1 Ld. Raym., R., 8; S. C., 27 M., 346). Lord Hardwicks, in Attorney General vs. Pearse (2 Atk. R., 87) said:

"The charter of the Crown can not make a charity more or less public, but only more permanent than it would otherwise be."

And the decision of the Supreme Court in the case of Dartmouth College vs. Woodward, is direct to the same purpose:

"Nor does it make any difference that the funds have been generally derived from the bounty of the Government itself. The Government may as well bestow its bounty upon a private corporation for charity as upon a public corporation; and its funds bestowed upon the former become irrevocable, precisely in the same manner and to the same extent as if they had been bestowed upon an individual. The Government can not resume a gift once absolutely made to a private person; neither can it resume a like gift to a private corporation. It is true that the Government may reserve such a power in granting a charter, if it chooses so to do; but then the power arises from the very terms of the grant and not from any implied authority derived from the bounties being for general charity, any more than it would from its being for private charity. The Government may reserve a right to revoke at pleasure even its private gifts; but certainly will not imply such right without some positive expression of such an intention. Mr. Chancellor Kent has stated the true principles of law on this subject with his usual clearness and correctness:

"'An eleemosynary corporation,' says he, 'is a private charity constituted for the perpetual distribution of the alms and

bounty of the founder. In this class are ranked hospitals for the relief of the poor, sick and impotent persons, and colleges and endowments established for the promotion of learning and piety, and endowed with property by public and private donor.' If with these principles in view we examine the charter of Boudoin College we shall find that it is a private and not a public corporation. It answers the very description of a private college, as laid down by Mr. Chief Justice Marshall in Dartmouth College vs. Woodward.

"The Commonwealth of Massachusetts was its founder, having given it its original funds, but it is made capable of receiving and has actually received funds from the bounty of private donors. The Legislature was bound by the act. They could not resume their grant, and they could not touch the vested rights, privileges or franchises of the college, except so far as the powers were reserved by the sixteenth section of the act. It (the Legislature) can not intermeddle with its property. It can not extinguish its corporate existence. It can not resume all its property and annihilate all its property and franchises."

It was accordingly held that this act was unconstitutional and void.

Allean vs. McLean, 1 Sumner, 276 et seq.

The facts in the long and intricate case of *Regents of University of Maryland vs. Williams*, 9 Gill & John. (Md.), 365, were, in some respects quite similar to those involved in the matter here under consideration. On account of their length, we can not even undertake to summarize the facts. A few quotations from the opinion of the Court will indicate its holding as to law:

"The corporation or artificial being composed of natural persons for the management of the affairs of the institution (the University) in contemplation of law is private; as much so as the individuals composing it were before the act of incorporation imparted to them an artificial existence, with power to take and hold property in that particular form."

Again:

"A charity may be public although administered by a private corporation, and to hold a corporation to be public because the charity was public, would be to confound the popular with the strictly legal sense of terms, and to jar with the whole current of decisions from the time of Lord Coke, 2 Kent's Co., 273."

The extent of the property or funds it may have acquired by donation or otherwise is not material:

"The capacity, expressly given, to acquire and hold property in perpetuity, for the uses and purposes of its institution, is the same thing, so far as concerns its character as a corporation, as the actual acquisition would be. It appears from the statement of facts that it has been endowed to a small amount by private donations, and no donation that it can derive from the bounty of the State would change its character and convert it into a public corporation.

"That a charter or act of incorporation, when accepted, is a contract, is a proposition too self-evident and universally acceded to be drawn in question or to require the aid of argument or authority to support it. There is no dictum opposed to it to be found in the books; and it would be strange if there was, assuming (what is nowhere denied and can not be) that the Government can compel no one to become an incorporated body without their consent, and that acceptance of an act or charter of incorporation is necessary to the creation of an incorporated body. The grant being powers and franchises conferred and the stipulation on the part of the Government that they shall be held and enjoyed, on the implied conditions that they are to be exercised in the promotion of the objects of the charter; and the acceptance being an implied undertaking on the part of the grantees, that they will, in consideration of the charter and the franchises granted, perform the conditions; which, as it can not be forced upon them against their will, is necessarily a subject of contract requiring the concurring assent of the parties respectively concerned, and ripened into a contract for the fulfillment of the terms of the charter, when that concurrence is manifested by acceptance.

"In the King v. Pasmore, 3 Term, R. 97, Butler, J., said:

" 'I do not know how to reason on this point better than in the manner urged by one of the relators counsel who considered the grant of incorporation to be a compact between the town and a certain number of subjects, the latter of whom undertook, in consideration of the privileges, which are bestowed, to exert themselves for the good government of a place.'

"Or could it be said that a voluntary donation from the State for a grant of lands to this institution authorized to receive such donation, would be void and that the land so given could be taken away again by the State at pleasure and be given to another. If not, neither can the franchise, the incorporeal hereditaments, conferred by this act of incorporation be taken away. The principle is the same, equally applicable to both and one is just as irrevocable and inviolable as the other—property, though of different description, being the subject of it—among the rights granted, is

that of acquiring and holding property in perpetuity. And the State is pledged not only to the corporation but to all donors to the institution on the faith of this contract, and to revoke it would be to violate the plighted faith of the State; that it shall remain inviolable. If the State had a right to revoke at will this grant, it has the same right in relation to railroads, canal and other corporations, which will not be pretended. To say that the Legislature possesses power to pass capriciously or at pleasure a valid act, taking from one his property and giving it to another, would be, in this age and in this State, a startling proposition to which assent of none could be yielded, and yet there is nothing to forbid it, if it is once conceded; that they have the power to dissolve one corporation and take from it its franchises and property without its consent, and transfer them to another."

Or, it may may be added, to the State of Wyoming.

Regents of Univ. of Md. vs. Williams, 9 Gill & John., 375-427.

In the case of *The United States Bank vs. Planters' Bank of Georgia*, 9 Wheaton, 907, Chief Justice Marshall used the following language, which is quoted and approved in the case of *State Bank of South Carolina vs. Gibbs*, 3 McCord, 226, namely:

"It is a sound principle that when a Government becomes a partner in a trading company, it divests itself so far as concerns the transactions of that company of its sovereign character, and takes that of a private citizen."

It was accordingly held that a bank was not a public corporation because a part of the stock therein was owned by the public. Such corporation was nevertheless a private corporation.

The State University of Indiana was established by an act which made provision for a Board of Trustees and enacted that they and their successors should be a body politic with the style of "The Trustees of the Indiana University." In the case of *State vs. Carr*, 111 Ind., 335, the Court held said University to be private and not a public institution. The Court in its opinion said:

"That the University was established under the direct authority of the State through a special act of the Legislature, or that the charter contained provisions of a purely public character, nor yet that the institution was established and is and should be perpetually maintained at the public expense for the public good, does not make it a public corporation."

In *Downing et al. vs. Indiana State Board of Agriculture*, 12 L. R. A., 664, the State Board of Agriculture of Indiana created a body corporate with perpetual succession, including as ex-officio members the president of each county agricultural society, and which is in a sense an educational institution required to hold an annual meeting and receive reports from county societies and make an annual report to the Legislature, its fund having been received for the most part from other sources than the State, was held to be a private and not a public corporation, although no shares of stock were issued.

In *Board of Education vs. Blackwell*, 10 N. E. Reports, 378 (Ill.), The Normal University of Illinois incorporated under the name of "The Board of Education of the State of Illinois," was held to be a private corporation and that the facts the Board of Trustees of said institution repeatedly represented themselves to the Legislature as a public corporation and asked for appropriations, that the Legislature by a subsequent act declared that the State Normal University was a state institution and that the property of the board was the property of the State and that the State thereafter made appropriations for the support of the institution which were accepted and used by it, did not operate to change the character of the corporation from a private corporation.

"The Legislature of North Carolina, in the year 1789, granted to the Trustees of the University, all the property that has heretofore or shall hereafter escheat to the State, and by another act passed in the year 1794, they granted confiscated property within the State.

"By an act passed in the year 1800, they declared 'that from and after the passage of this act, all acts and clauses of acts which have heretofore granted power to the Trustees of the University to seize and possess any escheat or confiscated property, real or personal, shall be, and the same is, hereby repealed and made void.'

"'*And Be It Further Enacted*, That escheated or confiscated property which the said Trustees, their agents or attorneys, have not legally sold by virtue of the said laws, shall from hence revert to the State, and henceforth be considered as the property of the same, as though such laws had never been passed.' The Trustees aforesaid, in pursuance of the powers vested in them by the act of 1789, have brought this suit to recover the possession of a tract of land escheated to the State before the passing of the

repealing act in the year 1800. The defendants have pleaded this repealing act in bar, in which they allege the power of the Trustees to support this action is entirely destroyed. It is, therefore, now to be considered how far the Trustees have title under the act of 1789, and, in the next place, how far they are divested of that title by the repealing act of 1800."

Trustees of University of North Carolina vs. Fay, 1 Murphy (4 N. C.), 81.

The Court in this opinion further said:

"The Constitution directed the General Assembly to establish this institution and endow it. We view this corporation as standing on higher grounds than any other or aggregate corporation. It is not only protected by the common law, but is sanctioned by the Constitution. * * * But if a Legislature can deprive the University of appropriated and vested funds, they can do that which will produce the same consequence; for, depriving the institution of funds and refusing to make any additional appropriations, there never can exist in the State any public school or schools, and thus the Legislature may indirectly affect that purpose which, if expressed in words before mentioned, they could not do. * * * And though the Trustees are a corporation established for public purposes, yet their property is as completely beyond the control of the Legislature as property of individuals, or that of any other corporation."

It was held in this case that the State had no title to the lands claimed, but that the same belonged perpetually to the Trustees of the University.

With implicit faith in the honor of the State and the guaranty of good faith and inviolability held out in the charter, the Trustees of the Wyoming Agricultural College accepted the sacred trust funds devised and bequeathed by the last will and testament of Phillip Wisser, deceased; and with the same confidence and reliance they expended a portion of said funds in the purchase of a site for said College, placing the title thereto in the State of Wyoming.

By the repealing act, if upheld, the College is destroyed, the Trustees thereof abolished, and these sacred trust funds confiscated to the State, or transferred to the University of Laramie. The Court can not censure the Trustees for defending said trust

funds and property as with their lives and in rebelling against this high-handed act of tyranny and perfidy by the Legislature of Wyoming.

We respectfully submit that on account of the manifest error committed, as shown by the record in this case, the judgment of the Supreme Court of the State of Wyoming should be reversed, and this cause remanded, with directions to said Court to overrule the demurrer to the petition.

Respectfully submitted,

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FILE COPY.

In the Supreme Court

OF THE

UNITED STATES

OCTOBER, 1906

Office Supreme Court
FILED
APR 17 190
JAMES H. McKEN

THE STATE OF WYOMING, ex relatione The Wyoming Agricultural College, and MATT BORLAND, et al., Trustees,
Plaintiffs in Error,

vs.

WILLIAM C. IRVINE, as Treasurer of the State of Wyoming,
Defendant in Error.

No. 272

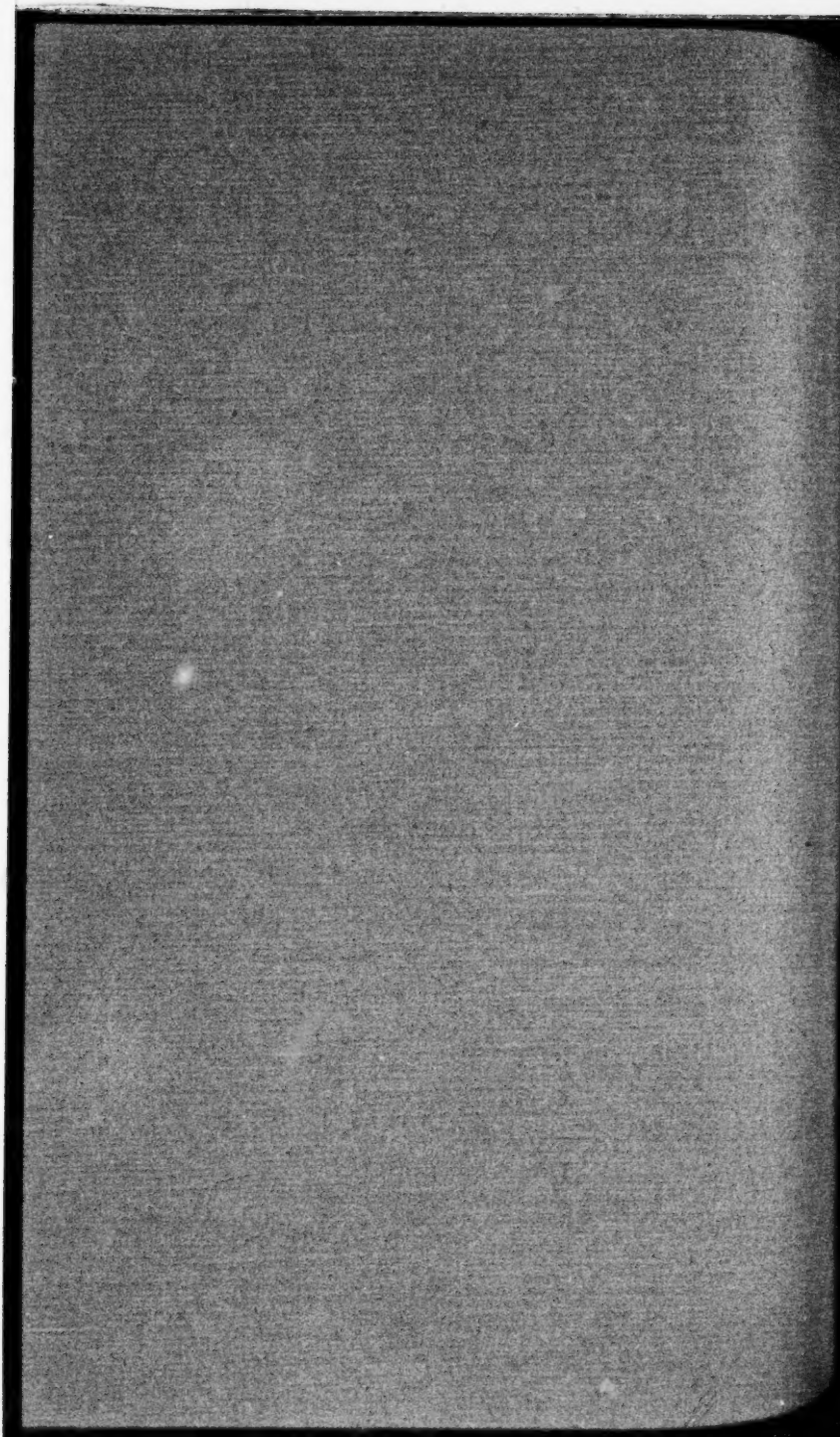
IN ERROR TO THE SUPREME COURT OF THE STATE OF WYOMING

BRIEF OF DEFENDANT IN ERROR

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Supreme Court of the United States
OCTOBER, 1906

THE STATE OF WYOMING, *ex relatione* The Wyoming Agricultural College, and MATT BORLAND, *et al.*, Trustees,
Plaintiffs in Error,
vs.
WILLIAM C. IRVINE, as Treasurer of the State of Wyoming,
Defendant in Error.

No. 279

IN ERROR TO THE SUPREME COURT OF THE STATE OF WYOMING

BRIEF OF DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

Briefly stated, the object of this suit is to obtain by *mandamus* certain funds alleged to be in the hands of the State Treasurer, to be used by the plaintiff trustees in the maintenance of an

agricultural college at Lander, in the State of Wyoming.

The funds sought to be controlled by the decision in this case are derived from three sources, viz:

1st. From the rental by the State of certain lands donated to it by the Act of Congress of July 2, 1862, (12th Stat. L. 503-505). (Rec. pp. 14-16).

2nd. From the annual donation made to the State under the Act of Congress of August 30, 1890, (26th Stat. L. 417). (Rec. pp. 17-19).

3rd. From the donations made under the Act of Congress of March 2, 1887, (24th Stat. L. 440). (Rec. pp. 19-21).

For many years like funds so received by the Treasurer of the State, have been paid over by him to the Treasurer of the University of the State of Wyoming, to be by its trustees expended in connection with that institution as prescribed by the several laws making the donations. (Rec. p. 29).

The legislature, in 1891, established the relator as "The Wyoming Agricultural College", which was afterwards located at Lander by vote of the people. In 1905 the legislature repealed the act establishing the Agricultural College. In the interim the institution had received a bequest of private property. It was claimed by the relator that the act of the legislature creating it established it as a private corporation; that the act was a con-

tract for the perpetuation of such institution, and that especially after the bequest of the property to it the act of creation had become an irrevocable contract and an irrepealable law.

It was claimed in the second place that the donation of the land and money under the Acts of Congress, in terms made to the State, were, in effect, grants to the relator college, conferring upon it, when created, a vested right, which could not be taken away by the State.

On the other hand it was claimed by the defendant that the act creating the relator college expressly and substantially made it "A State Public Educational Institution" and not a corporation, and which, being established by the State, could be disestablished by the same authority; that, even if the college were a private corporation, the reserved right in the Constitution and laws of the State to alter, amend or repeal the acts creating corporations, would prevent a corporation from claiming perpetuity or escaping the control so reserved to the legislature; and that, in either case, the fact of the bequest of private property could not divest the State of powers inherent in it, as well as expressly reserved.

As to the right claimed as a direct effect of the Acts of Congress, the defendant contended that these acts, by express terms and clear intendment, made the donations to the State, and not to the particular college or institution to which the State might afterward appropriate or apply the funds. Upon these grounds it was contended by the de-

fendant that the act repealing the act establishing the Agricultural College, was a valid exercise of the powers of the State legislature, and did not impair the obligation of any contract, or take away any right conferred by the Act of Congress upon the relator college; and that such being the law, the college had passed out of existence, had no capacity to sue, and was not the real party in interest under the claim set up.

It was further contended that even had the repealing act not been passed, there was no contract under which the college could claim the money sought to be recovered in the action; that there was no statute of the State under which the Treasurer could lawfully pay the money out, but, on the contrary, he was specifically required by the State statutes to pay the money to the University.

Defendant further contended that by reason of the provisions of the Constitution of the State, the act creating the Agricultural College was invalid, and that the Constitution itself had expressly appropriated and applied the grants of Congress to the State to the use and benefit of the University and its departments.

The Supreme Court of the State holds as follows:

1st. The University is entitled to receive for its Agricultural and Mechanical Colleges the funds in question.

2nd. The plaintiff, the Agricultural College, is not entitled to receive any of these funds.

3rd. The Wyoming Statutes exclude any rights in relator.

4th. The Wyoming Statutes do not deny any right secured by Federal Statute.

5th. The repealing act of February 7, 1905, discontinued the Agricultural College.

(Rec. pp. 39-69).

ARGUMENT.

I.

THE UNIVERSITY OF THE STATE IS ENTITLED TO BE THE RECIPIENT OF THESE FUNDS.

In considering the question as to the capacity of the University to be the recipient of the funds in question, it will be observed that the several donations in question as made under the said several acts, are to the State, this appearing plainly from a most casual reading of the acts. (Rec. pp. 14-21). They are grants upon condition to the State, as the following excerpts show:

> "There is hereby granted *to the several States*, for the purposes hereinafter mentioned,

an amount of public lands to be *appropriated by each State*".

"That the lands aforesaid, after being surveyed, shall be apportioned *to the several States.*"

"And the Secretary of the Interior is hereby directed to issue *to each of the States* in which there is not the quantity of public lands subject to sale at private entry at $1.25 per acre to which said State may be entitled under the provisions of this act, land scrip", etc., "said scrip to be sold by said State. * * * *Provided*, That in no case shall any *State to which land scrip may be thus issued*, be allowed to", etc.

"That all the expenses of management, superintendence, and taxes, from the date of selection of said lands, previous to their sales, and all expenses incurred in the management and disbursement of the moneys which may be received therefrom, *shall be paid by the States to which they belong out of the treasuries of said States.*"

"That all moneys derived from the sale of lands aforesaid *by the States* to which the lands are apportioned * * * shall be invested in stocks of the United States or the States, or some other safe stocks, or the same may be invested *by the States* having no State stocks in any other manner after the *legislatures* of such States shall have assented thereto. * * * And the interest of which shall be inviolably appropriated *by each State* which may take and claim the benefit of this act, to the endowment, support and

maintenance of at least one college where the leading object shall be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture *and the mechanic arts*, in such manner as the *legislatures of the States* may respectively prescribe".

"That the grant of land * * authorized shall be made on the following conditions, to which, as well as the provisions hereinafter contained, *the previous assent of the several States* shall be signified by legislative acts".

"If any portion of the fund invested, * * * or any portion of the interest thereof, shall by any action or contingency be diminished or lost, *it shall be replaced by the State to which it belongs*, so that the capital of the fund shall remain forever undiminished"; permitting, however, the expenditure of ten per cent. of such amount "*whenever authorized by the respective legislatures of such States*".

"*Any State* which may take and claim the benefit of the provisions of this act, shall provide within five years at least, not less than one college. * And upon failure the grant shall cease and *the said State* shall be bound to pay to the United States the amount received", etc.

"*No State* while in a condition of rebellion or insurrection against the government of the United States, *shall be entitled* to the benefit of this act."

"*No State* shall be entitled to the benefit of this act unless it shall express *its acceptance* thereof by its legislature."

[Act of July 2, 1862.]

"That there shall be, and hereby is, annually appropriated out of any money in the treasury not otherwise appropriated, arising from the sales of public lands, to be paid as hereinafter provided *to each State*, for the more complete endowment and maintenance of a college", etc. "And the annual amount to be paid thereafter *to each State* shall be", etc. "That no money shall be paid out under this act *to any State or Territory* for the support or maintenance of a college where a distinction in race or color is made in the admission of students."

"That the sums hereby appropriated *to the States and Territories* * * * shall be annually paid on or before the thirty-first day of July of each year, by the Secretary of the Treasury, upon the warrant of the Secretary of the Interior, out of the treasury of the United States, *to the State or Territorial* treasurer, or to such officer as shall be designated by the laws of such State or Territory to receive the same. * * * * The grants of money authorized by this act are made subject to the legislative assent of the several States. * * * * Provided that payment of such installments of the appropriation herein made as shall become *due to any State* * * * * shall be made upon the assent of the governor thereof."

"That if any portion of the moneys received

by the designated officer of the State or Territory" shall be lost or misapplied, "it shall be replaced *by the State or Territory to which it belongs*, and until so replaced no subsequent appropriation shall be apportioned or paid *to such State or Territory*".

"That on or before the first day of July of each year after the passage of this act, the Secretary of the Interior shall ascertain and certify to the Secretary of the Treasury as to *each State* and Territory, whether it is entitled to receive *its share* of the annual appropriation for colleges. * * * * If the Secretary of the Interior shall withhold a certificate *from any State or Territory*, * * * the facts and reasons therefor shall be reported, * * * * in order that *the State or Territory* may, if it so desire, appeal to Congress."

[Act of Congress, Aug. 30, 1890.]

"There shall be established *under direction of the college or colleges, or agricultural department of colleges*, in each State or Territory, established, or which may hereafter be established, in accordance with the provisions of an act approved July 2, 1862. * * * * That in any State or Territory in which two such colleges have been, or may be, established, the appropriation herein made to *such State or Territory* shall be equally divided between such colleges *unless the legislature of such State or Territory shall otherwise direct.*"

"That for the purpose of paying the necessary expenses * * the sum of

fifteen thousand dollars per annum is hereby appropriated *to each State.*"

"That nothing in this act shall be construed to impair or modify the legal relations existing between any of said colleges and the government of the States in which they are respectively located."

"That in the States having colleges entitled under this section to the benefits of this act, * * * * such States shall be authorized to apply such benefits to experiments, at stations so established by such States, and in case *any State* shall have established under the provisions of said act of July 2 aforesaid *an agricultural department or experimental station, in connection with any university*, college or institution not distinctively an agricultural college or school, and such State shall have established, or shall hereafter establish, a separate agricultural college or school, which shall have connected therewith an experimental farm or station, *the legislature of such State* may apply, in whole or in part the appropriation by this act made, to such separate agricultural college or school, and no legislature shall by contract, express or implied, disable itself from so doing."

"That the grants of moneys authorized by this act are made subject to the legislative assent of the several States and Territories to the purposes of said grants. *Provided*, That payment of such installment *due to any State* * * * shall be made upon the assent of the Governor," etc.

[Act of Congress, March 2nd, 1887.]

(The italics are ours.)

Thus it will be seen that the federal acts not only do not restrict the legislature from creating an agricultural department in the University, and designating the University as being the proper party to be the recipient of the funds donated, but on the contrary, by express language, they authorize and recognize the right of the State so to do.

That the University is an institution capacitated to be the recipient of these funds, and that the State has selected it and directed that they be expended in support of its agricultural and mechanical colleges, is clearly shown by reference to the territorial laws creating the institution, as well as by the articles of the Constitution of Wyoming, establishing it with all of its several departments, and by the several acts of the State legislature accepting the donations and appropriating them to the agricultural and mechanical colleges, departments of the University, all of which laws are cited and quoted from at length in the opinion of the Supreme Court in its decision. (Rec. pp. 43-46 and 55-56.) (See Appendix.)

II.

THE PLAINTIFF, THE AGRICULTURAL COLLEGE, IS NOT ENTITLED TO ANY OF THESE FUNDS.

The Agricultural College, conceding that it still exists as created by the act of the legislature

of the State of Wyoming of January 10, 1891, is not entitled to receive the funds in question, is, we submit, conclusively established by the facts heretofore set forth showing that the University is entitled to receive them, and also from the further reason that even though there were no University, and even though there had been no act of the legislature of the State of Wyoming designating the University as the proper agency through which these funds were to be used for the purpose for which they were given, and even had the act of the legislature of January 10, 1891, creating an Agricultural College not been repealed by the act of February 7, 1905, still no legislative act of the State gives authority to the treasurer of the State to pay over the funds in question to the treasurer of the Agricultural College, and without such act on the part of the legislature the treasurer is without authority to so do.

The act creating the Agricultural College nowhere provides that upon the establishment thereof it shall become the beneficiary of the grants in question.

It assuredly is not for the treasurer to decide even that such institution is established, much less that the University is no longer entitled to the funds.

Nowhere in the legislation of Wyoming has that institution been recognized since its creation by any subsequent legislation, until the passage of the act of February 7, 1905, repealing the act of January 10, 1891, creating the institution.

We, therefore, submit, that the decision of the

Supreme Court is correct as having rightly construed not only the Acts of Congress relating to these appropriations, but as well those of the Wyoming legislature relating to the rights of the Agricultural College to these funds, even if such institution is to be held as still existing.

These propositions do not present a case of first impression, as will be seen from the following citations, from a number of which the Wyoming Supreme Court quoted at length in its opinion. (Rec. pp. 52-56).

Mass. Agricultural College v. Marden, 156 Mass. 150.

Brown University v. Rhode Island College of Agriculture and Mech. Arts, 56 Fed. 55.

University v. Hart, 7 Minn. 72.

In re Agricultural Funds, 17 R. I. 815.

State ex rel. v. Knowles, 16. Fla. 577.

Yale College v. Sanger, 62 Fed. 177.

State v. The V. & N. R. R. Co., 51 Miss. 361.

Vincenheller v. Reagan, 69 Ark. 460.

People ex rel. v. Davenport, 117 N. Y. 549.

Trustees of Rutgers College et al. v. Morgan, 70 N. J. L. 460, affirmed 71 N. J. L. 663.

Liggett v. Ladd, 17 Or. 89.

State v. Bryan, (Fla.) 39 So. Rept. 929.

Cornell University v. Fiske, 136 U. S. 152-202.

Montana ex rel. Haire, v. Rice, State Treas., No. 252, decided Jan. 28, 1907.

In all of these cases above cited the respective courts deciding them, were dealing with like funds to those involved in this case, and possibly aside from the excerpts as quoted in the opinion of the Wyoming court (Rec. pp. 52-56), no court has spoken more plainly on the question than the Supreme Court of Mississippi:

> "The fund (says that court, speaking of the fund arising out of the sale of agricultural land scrip donated by the act of Congress of July 2, 1862,) which gives rise to this litigation was donated to t[illegible]ate. * * * * The grant was accepted by the legislature. * * * * The State thereby assumed to deal with the fund. * * * * It requires no argument to show that the State could only control the fund so as to make it productive and subserve the purpose of the grant by the action of the *political department* of government. * * * * Necessarily the law-making department must administer and control the fund by the selection and establishment of one or more colleges to impart the requisite instruction."

And then, in speaking of the power of the State to control the investment of the funds, it uses this language:

> "The discretionary power of the legislature over the subject is full."

And then as to the selection of the college where the funds are to be expended, this language:

> "The foregoing observations are applicable

in the main as respects the college, or colleges that may become the beneficiaries. The legislature is free to establish one or more colleges of the character described in the Act of Congress, and make them the recipients of the interest for their support, or it may, as it has done, bestow it upon the University. These Universities are public eleemosynary corporations, which dispense the bounty of the State, their founder, to such persons as it directs. They were created by the State, and are supported by public funds, and are instrumentalities in the scheme of education. Both of them are subject to change and modification by the legislature. Against the State neither of them can set up a vested right to property, or corporate franchises, their governing boards are appointees of the State without right or power to continue the succession. The State could withdraw the interest of this fund from them and found another institution and make it the recipient of it."

State v. The V. & N. R. R. Co., 51 Miss. 361.

III.

THE WYOMING STATUTES EXCLUDE ANY RIGHT IN RELATOR.

The Wyoming constitutional provisions establishing the University with its several departments, and the several acts of the Wyoming legislature designating the University as the recipient of the

funds in question, being in no wise in conflict with the federal acts making the donations, the decision of the Wyoming Supreme Court holding that the University is entitled to the funds in question, we submit is final and binding upon this court, as will be fully seen by reference to the following cases of the very many decided by this court upon like questions.

Eustis v. Bolles, 150 U. S. 370.
Murdock v. Memphis, 20 Wall. 590.
Harrison v. Morton, 171 U. S. 38.
Lehigh Water Co. v. Borough of Easton, 121 U. S. 388-392.
State of Montana ex rel. Haire, v. Rice, State Treasurer, No. 252, decided Jan. 28, 1907.

IV.

THE WYOMING STATUTES DO NOT NOR DOES THE DECISION DENY ANY RIGHT SECURED BY FEDERAL STATUTE.

First: The Land Donation.

The claim seems to be made that the State by accepting the grant of 90,000 acres of land under the Admission Act, became obligated to the plaintiff concerning such lands. It would be unnecessary upon this point to say more than no such

question was raised in the court below, and that it first appears in the Assignment of Errors. The same arguments would also apply as are applicable to the funds donated by Congress next discussed.

SECOND: THE FUNDS DONATED BY CONGRESS.

If the State, by accepting the donations under the Morrill and other acts, entered into a contract as to their disposition, it is for the United States to complain of the breach if there be any. The relators are not parties to the contract and are in no position to invoke its protection. Again, the appropriation of the funds so donated rests solely in the good faith of the State. Its discretion in disposing of them is not controlled by the conditions prescribed in the acts, as neither a contract nor a trust following the lands or funds was thereby created. A similar question arose as to lands granted under the Arkansas Swamp Act. In passing upon it this Court said:

> "The objection that the law of California authorizing the assessment in question, impairs the obligation of a contract created between the United States and the State by the Act of Congress of September 28th, 1850, commonly known as the Arkansas Swamp Act, is founded upon a misapprehension of its provisions. (9 Stat. 519, Ch. 84.) It is true the act granted to the State all the swamp and overflowed lands within its limits, on

condition that the proceeds of the lands, 'whether from sale or by direct appropriation in kind,' should be applied, as far as necessary, in reclaiming the lands by means of levees and drains. Hence the contention of counsel is that the State is bound to carry out this condition, and apply the proceeds to the reclamation, or provide for their application to that end, and that its legislation imposing an assessment upon other lands to raise the necessary funds for that purpose, is in violation of this contract, and therefore void. The answer to this position is twofold. In the first place, if a contract was created by the Arkansas act, when the State accepted its benefits, it is for the United States to complain of the breach if there be any. The plaintiff is not a party to the contract, and is in no position to invoke its protection. But, in the second place, the appropriation of the proceeds rests solely in the good faith of the State. Its discretion in disposing of them is not controlled by that condition, as neither a contract nor a trust following the lands was thereby created."

Hagar v. Reclamation District No. 108, 111 U. S. 701-712.

Mills County v. Railroad Companies, 107 U. S. 557-566.

Cook County v. Calumet &c. Co., 138 U. S. 635-655.

State ex rel. v. Rice, Treasurer, Decided by this Court January 28, 1907.

V.

THE REPEALING ACT DISCONTINUED THE AGRICULTURAL COLLEGE.

The relator contends that the repealing act cannot have the effect assigned to it by the State Court because of Section 10 of Article I, of the Constitution of the United States. which prohibits legislation impairing the obligation of a contract.

First: The Relator College is a Public Agency.

The relator has nowhere stated the terms of the contract which it seeks to have declared inviolable. Some of the allegations of the Bill seem to rest upon the contention that relator's charter constitutes it a private eleemosynary corporation.

Provisions of State Constitution.

The State Constitution contains the following:

"Perpetuities and monopolies are contrary to the genius of a free State, and shall not be allowed. Corporations being creatures of the State, endowed for the public good with a portion of its sovereign powers, must be subject to its control."

[Art. I, Sec. 30.]

"No appropriation shall be made for char-

itable, industrial, educational or benevolent purposes to any person, corporation or community not under the absolute control of the State, nor to any denominational or sectarian institution or association."

[ART. III, Sec. 36.]

"The legislature shall provide for the organization of corporations by general law. All laws relating to corporations may be altered, amended or repealed by the legislature at any time when necessary for the public good and general welfare, and all corporations doing business in this State may as to such business be regulated, limited or restrained by law not in conflict with the Constitution of the United States."

[ART. X, Sec. 1.]

"All powers and franchises of corporations are derived from the people and are granted by their agent, the government, for the public good and general welfare, and the right and duty of the State to control and regulate them for these purposes is hereby declared. The power, rights and privileges of any and all corporations may be forfeited by wilful neglect or abuse thereof. The police power of the State is supreme over all corporations as well as individuals."

[ART. X, Sec. 2.]

THE RELATOR'S CHARTER.

The act creating relator is set out in full in the record. (Pages 22-26) Also Appendix.

The State Court has carefully considered this statute under the State Constitution and holds that relator is a public instrumentality, not a private corporation. And while this Court "must decide upon its own responsibility as to the existence and meaning of the contract," yet this Court uniformly holds that "the Federal courts will lean towards an agreement of views with the State courts if the question seems to them balanced with doubt."

Tampa Waterworks Co. v. Tampa, 199 U. S. 241-243.

THE CONSTRUCTION OF THE ACT.

In its first section the Act declares that the relator "shall be a State public educational institution." Section 3 provides that the trustees shall be "appointed by the Governor by and with the advice and consent of the Senate." By Section 6, vacancies in the board of trustees "shall be filled by appointment to be made by the Governor." By clause 3, Section 9, the diplomas shall be issued "under the seal of the State." Section 12 requires relator to receive free of charge students selected by Boards of County Commissioners. By Section 17 the "Board of Visitors" must be appointed by the Governor. Sections 18 to 24 require that the seat of relator be fixed by vote of the people of the State at a general election.

The Bill alleges the location of relator by such

vote and that this was pursuant to the clause of the Constitution which says: "The legislature shall not locate any other *public institutions* except under general laws and by vote of the people."

The relator here seeks by mandamus an appropriation from the funds of the State although the Constitution (Art. III, Sec. 36, *supra*) prohibits such appropriation "to any person, corporation or community not under the absolute control of the State."

The act does not in terms create relator a corporation, nor authorize it to sue and be sued. No corporators or trustees are named in the act. No trustees were appointed until two years after relator's creation. The provisions of the act relied upon by relator to show its private character are that by Section 8 the trustees are given power,

(4) "To procure by purchase, donation, or otherwise, in the name of the State of Wyoming * * * * a suitable site, etc."

(5) "To possess and use for the benefit of the said Agricultural College the buildings and sites, etc."

(6) "To take and hold for the use and benefit of the Agricultural College any real or personal estate, and to dispose of the same in such manner as they may deem most conducive to the interests of said Agricultural College."

(7) "To expend any and all income in the promotion of the said Institution."

And by Section 13 to apply any donations in accordance with the directions of the donor.

We submit that even were the question *res integra* relator must be held a public instrumentality.

Inasmuch as similar institutions have everywhere been held public and not private, we take space to cite many cases showing the uniformity in the decisions.

Head v. University, 47 Mo. 220-224.
University of North Carolina v. Maultsby, 43 N. C. (8 Ired. Eq.) 257.
Lewis v. Whittle, 77 Va. 415.
State v. Vicksburg, &c., 51 Miss. 361.
University of Alabama v. Winston, 5 Stew. & P. (Ala). 17.
Weary v. State University, 42 Ia. 335.
Thomas v. Illinois Indus. University, 71 Ill. 310-312.
Illinois Indus. University, v. Champaign Co., 76 Ill. 184.
University v. R. R. Co., 76 N. Car. 103.
Estate of Royer, 123 Cal. 614-621.
Watson Seminary v. Pike Co. Court, 149 Mo. 57.
Board of Education v. Phillips, 67 Kan. 549.
Oklahoma &c. College v. Willis, 6 Okla. 593.
State ex rel. v. Knowles, 16 Fla. 577.
State ex rel. v. Bryan, (Fla.) 39 So. 929-949.
Tucker v. Pollock, 21 R. I. 317.
In re School Committee of North Smithfield, 26 R. I. 164.

The institution being public in character, the Legislature had full power to modify or repeal its charter.

Cases last above cited.

Dartmouth College Case, 4 Wheat. 629.

Ibid, pages 664-666.

Ibid, page 668 and following; also page 712.

Charles River Bridge v. Warren Bridge, 11 Pet. 419.

East Hartford v. Hartford Bridge Co., 10 Howard (U. S.) 511-533, 534.

Laramie County v. Albany County, 92 U. S. 307-311.

Williamson v. New Jersey, 130 U. S. 189-199.

Essex Public Road Board v. Skinkle, 140 U. S. 334.

New Orleans v. New Orleans Water Works Co., 142 U. S. 79-89-91.

C., B. & W. R. R. Co. v. Nebraska, 170 U. S. 57-72.

Attorney General ex rel. v. Lowrey, 199 U. S. 233-240.

The Effect of the Wisser Bequest.

The claim seems to be made that by Mr. Wisser's bequest, coupled with the provisions in the Act for carrying out the wishes of the donor, the relator has in some way been changed from a public to a private institution.

There is no contract relation between the

State and the donor. The donation must be presumed to have been made with knowledge of the public character of the relator and the right of the State to control or discontinue it. No question of the disposition of the Wisser bequest is before the Court. His representatives are not parties, hence their rights are not in issue. Moreover, neither the repealing act nor the decision of the State Court in any wise touches the disposition to be made of the Wisser funds.

> "It is not competent for a town, or any other mere municipal organization, which is made the trustee of such an estate or of any charity, to set up a vested right of that character as against the government, and thereby prevent the State from changing its political and municipal organization as the public interests may demand. If towns, by their charter or in any other way, are made trustees of such an estate for such purposes, their right and title as such is held subject to be defeated, whenever the State shall deem it necessary to abolish their existence as a town, or as a municipal organization."
> *Montpelier v. East Montpelier*, 29 Vt. 12-21.

In the case of *Newton v. Commissioners*, 100 U. S. 548, on pages 557 and 559, this Court passed upon the right of the legislature of Ohio to remove a county seat which had been fixed by an act of the legislature, conditioned that the citizens of the place chosen for its seat should make certain donations for the erection of public buildings, etc. This Court in discussing the question that arose and the

applicability of the Dartmouth College case, used these words:

> "The principle there laid down, and since maintained in the cases which have followed and been controlled by it, has no application where the statute in question is a *public law* relating to a *public subject* within the domain of the general legislative power of the State, and involving the *public rights* and *public welfare* of the entire community affected by it. The two classes of cases are separated by a broad line of demarcation." (The italics are the Court's.)

The Court then proceeds to discuss various government agencies and the respect in which charters and rights granted to such differ from charters to private corporations and institutions, and in respect to the government agencies concludes with these words:

> "In all these cases, there can be no contract and no irrepealable law, because they are 'governmental subjects,' and hence within the category before stated.
>
> "They involve *public interests*, and legislative acts concerning them are necessarily *public laws*. Every succeeding legislature possessed the same jurisdiction and power with respect to them as its predecessors. The latter have the same power of repeal and modification which the former had of enactment, neither more nor less. All occupy, in this respect, a footing of perfect equality. This must necessarily be so in the nature of things. It is vital to the public welfare that each one

should be able at all times to do whatever the varying circumstances and present exigencies touching the subject involved may require. A different result would be fraught with evil."

An interesting case upon the same question is *University v. Maultsby*, 8 Iredale Eq. (43 N. Car.) 257 on page 264. In that case the court first decided that the University at its creation was a public corporation, and then proceeded as follows:

"It is true, that since the incorporation, there may have been donations to the college; but that would not alter the nature of the foundation, nor the character of the corporation."

Another case in point is *Head v. The University of Missouri*, 47 Mo. 220 on page 225. In that case the Court say:

"The Legislature, by an act passed February 8, 1839, (Sess. Acts 1838-9, p. 184), appointed a board of commissioners to locate the University, and receive grants of land, as also bids from certain named 'counties and from the citizens thereof for such sums of money' as might be offered to secure the location of the institution. Under this act, as the case shows, 'private citizens of Boone county subscribed the sum of $108,000; and Columbia College, by its board of trustees, subscribed the buildings and apparatus, valued at $10,000, to the building fund of said University.' It further appears that the University was located in Boone county, in 'consideration' of the above mentioned subscriptions. In other words, the parties named contributed a liberal bonus to secure the location of an existing

State institution in their county. But those contributions to the building fund did not constitute the contributors founders of the University. Nor did the contributions alter the 'nature of the foundation, or change the character of the corporation.' "

A case somewhat similar is the case of *Board of Education v. Phillips*, 67 Kan. 549. There the Court say:

"The rule, therefore, that the legislature can pass no law impairing the obligation of contracts does not apply to parties dealing with a department of government concerning the future exercise of powers conferred for public purposes by legislative acts, where the subject matter of the contract is one which affects the safety and welfare of the public. In such cases 'the presumption is that, when such contracts are entered into, it is with the knowledge that parties cannot, by making agreements on subjects involving the rights of the public, withdraw such subjects from the police power of the Legislature.' "

State ex rel. v. Knowles, 16 Fla. 577.

Thomas v. Illinois Indus. University, 71 Ill. 310.

Estate of Royer, 123 Cal. 614.

Watson Seminary v. Pike County Court, 149 Mo. 57.

Tucker v. Pollock, 21 R. I. 317.

Swartz v. Commissionors, 158 Ind. (N. E.) 141.

Edwards v. Lesueur, 132 Mo. 410.

State ex rel. v. Bryan, (Fla.) 39 So. 929-949.

The Reserved Right to Repeal Private Charters.

Even were the relator a private institution, still the State has reserved the full power to alter, amend or repeal its charter.

> "As the power to grant unamendable and irrepealable charters is one readily susceptible of being greatly abused, to the prejudice of important public interests, and has been greatly abused in the past, the people in a majority of the States, in framing or amending their Constitutions, have prudently guarded against it by reserving the right to alter, amend or repeal all laws that may be passed, conferring corporate powers. These provisions give protection from the time of their adoption, but the improvident grants theretofore made are beyond their reach."
>
> Cooley on Constitutional Limitations, 6th Ed., pages 335 and 336.

For the reasons and along the lines stated by Judge Cooley the people of this State wrote into their Constitution the following provisions:

> "The legislature shall provide for the organization of corporations by general law. All laws relating to corporations may be altered, amended or repealed by the legislature at any time when necessary for the public good and general welfare."
>
> Article X, Section 1, Constitution of Wyoming.

Such a provision in the fundamental law of the State reserves full power of repeal.

Miller v. State, 15 Wall. 478-495.
Hamilton Gas Light Co. v. Hamilton City, 146 U. S. 258-270.
Citizens' Savings Bank v. Owensboro, 173 U. S. 636-644.
Northern Central R. R. Co. v. Maryland, 187 U. S. 258-267.

We submit that the Supreme Court of the State did not err.

Respectfully submitted,

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APPENDIX

BEING

SECTIONS from the General Laws of the Territory of Wyoming, Sections from the Wyoming Constitution, and Sections from the State Laws, cited in opinion of the Supreme Court of Wyoming and Brief of Counsel.

CORPORATIONS.

Religious and Benevolent Societies, Libraries, Colleges, Academies, Fire and Military Companies.

SECTION 1. Any number of persons, not less than three, may associate themselves together in the manner hereinafter mentioned, for any of the following purposes:

First: * * * * * * *
Second: * * * * * * *
Third: * * * * * * *
Fourth: * * * * * * *

Fifth: To establish and maintain a college, academy or other like institution, for the education of youth.

Sixth: * * * * * * *

ARTICLE II, Chapter 8, General Laws of the Territory of Wyoming, passed at the first session of the Legislative Assembly, Approved December 10, 1869.

Compiled Laws of Wyoming, 1876, p. 241.

Revised Statutes Wyoming, 1899, Sec. 3225.

CHAPTER 37.

CAPITOL BUILDING AND UNIVERSITY.

AN ACT to provide for the erection of a Capitol building at the Capital of the Territory, and for other purposes.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming:

SEC. 34. There shall be established in this Territory an institution under the name and style of "The University of Wyoming," to be located in or near the City of Laramie, in the manner hereinafter named.

SEC. 35. The objects of such university shall be to provide an efficient means of imparting to young men and young women, on equal terms, a liberal education and thorough knowledge of the different branches of literature, the arts and sciences, with their varied applications.

SEC. 36. The government of the university shall be vested in a board of seven trustees, three of whom shall at all times be residents of the City of Laramie aforesaid.

SEC. 37. Such board of trustees shall be authorized, whenever it deems the same expedient, to incorporate under the general corporation laws of this Territory, and may thereby acquire,

in addition to the powers herein named, the general powers of a body politic and corporate.

SEC. 38. The term of office of such trustees shall be four years, except as provided in the next two succeeding sections.

SEC. 39. It shall be the duty of the governor, during the present session of the Legislative Assembly, to nominate, and by and with the advice and consent of the Legislative Council, to appoint seven residents of the Territory as members of said board of trustees, three of whom shall serve for two years, and two of whom shall serve for four years, and two of whom shall serve for six years, and hereafter, during the session of each succeeding Legislative Assembly, the governor shall nominate, and by and with the advice and consent of the Legislative Council appoint successors to such of said trustees whose terms of office shall have expired or will expire before the next session of the Legislative Assembly.

SEC. 40. Any vacancy in the said board of trustees, caused by death, resignation, removal from the Territory or otherwise, shall be filled by appointment, to be made by the governor, which appointment shall continue until the next session of the Legislative Assembly, and no longer.

SEC. 41. A majority of the members of such board of trustees shall constitute a quorum for the transaction of business, and said board shall hold regular meetings on the first Mondays of January, April, July and October of each year.

SEC. 42. The said board shall have power—

First—To elect one of its members president of such board.

Second—To appoint a secretary and treasurer from among the members of such board, and such other officers as it may deem necessary for the good order and government of said university, and to prescribe their duties and fix their compensation.

Third—To provide by resolution or otherwise for special meetings of such board.

Fourth—To possess and use for the benefit of the university the university building and site hereinbefore named, when said building shall be completed.

Fifth—To take and hold for the benefit of the university, any real or personal estate, and to dispose of the same in such manner as it may deem most conducive to the interests of the university.

Sixth—To expend the income placed under its control by the provisions of this act, and such other funds as it may receive, in such manner as shall best promote the interest and prosperity of the university.

Seventh—To elect a president and such professors, tutors, and other officers of the faculty of such university as shall be necessary, who shall hold their offices during the pleasure of the trustees.

Eighth—To prescribe the duties, salaries and emoluments of such professors, tutors and officers.

Ninth—To prescribe the course of study and discipline to be observed in the university and the price of tuition.

Tenth—To make all by-laws and rules necessary and proper to carry into effect the powers herein conferred.

SEC. 48. The president, professors and tutors of such university shall be styled the faculty, and shall have power—

First—To enforce the rules and regulations adopted by said trustees for the government of the students.

Second—To reward and censure students as they may deserve, and to suspend those who continue refractory, until a determination of the board of trustees can be had thereon.

Third—To grant and confer, by and with the consent and approbation of the trustees, such literary honors and degrees as are usually granted and conferred in other colleges and universities in the United States, and in testimony thereof to give suitable diplomas, under the seal of the Territory and signatures of the faculty.

SEC. 44. No member of the faculty of such university shall, while acting in that capacity, be a trustee.

SEC. 45. No religious qualification or test shall be required of any student, trustee, president, professor, tutor or officer of such university, or as a condition for admission for any privilege in the same; and no sectarian tenets or principles shall be taught, instructed or inculcated at said university by any president, professor or tutor therein.

SEC. 46. The trustees shall provide for the tuition, free of charge, of such students from each county as may be selected and appointed by the board of the county commissioners therein.

SEC. 47. In the management and application of any property, real or personal, granted, devised or bequeathed to the use of said university, or the proceeds thereof, the trustees shall conform to the will and directions of the donor thereof, if any such shall have been connected therewith.

SEC. 48. The said trustees shall require their

treasurer to give a bond, with sureties to be approved by them, in double the sum likely to come into his hands.

SEC. 49. The secretary of the board of trustees shall keep a true record of the proceedings of said board, and make and certify to copies thereof. He shall also keep an account of the students in said university, according to their classes, showing their respective ages and places of residence.

SEC. 50. The treasurer of said board of trustees shall keep full, true and faithful accounts of all moneys received by him as such treasurer, and of all expenditures and disbursements thereof; he shall pay out the moneys received by him as such treasurer, on the order of the board of trustees, certified by their secretary; he shall keep accurate accounts with all persons having dealings with such university; shall collect the tuition fees due the same, and shall submit a full and proper statement of the finances of the university and of his receipts and disbursements at each regular meeting of the board of trustees, and at such other times as said board may direct.

SEC. 51. A board of visitors, to consist of three persons, shall be appointed biennially, at the commencement of the collegiate year, by the governor of the Territory. It shall be their duty to make a personal examination into the state and condition of the university, and all its affairs, twice at least in each year, and report the result to the governor, suggesting such improvements as they may deem proper, which report shall be submitted to the Legislative Assembly at its next session. Such visitors shall receive no compensation for their services.

SEC. 52. To provide an income for such uni-

versity there shall be assessed upon all taxable property of the Territory, in each year after the passage of this act, a tax of one-fourth of a mill on each and every dollar of the assessed valuation of such property, which tax shall be levied, collected and paid to the territorial treasurer in the manner provided by law for the levy, collection and payment of other territorial taxes. Said tax, when so paid to the territorial treasurer, shall be paid to the treasurer of said board of trustees upon the warrant of the territorial auditor, to be issued upon request of said board of trustees.

Approved March 4, 1886.

Chap. 37, S. L. 1886.

CHAPTER 101.

AN ACT to authorize the territorial treasurer to receive and receipt for all moneys and funds donated to the Territory for school purposes.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming:

SECTION 1. That whenever the Territory of Wyoming shall be entitled to receive any moneys or funds from the United States of America, or from any other source or authority, to be expended for the benefit of the public schools of the Territory, or held or in any manner applied for their benefit, the territorial treasurer is hereby authorized to receive and receipt for such moneys or funds, and to make such application and use of the same

as may be required by law. Should such moneys or funds be donated to the Territory, and should the act of donation require such moneys or funds to be applied or held or used in a particular manner, they shall be so applied.

SEC. 2. The territorial treasurer shall faithfully account for all moneys and funds received pursuant to the foregoing section, and he and his sureties upon his official bond shall be liable for any failure to so account for such moneys or funds.

SEC. 3. This act shall take effect from and after its passage.

Approved March 12, 1886.

[Sec, 622, R. S. Wyo. 1899.]

CHAPTER THREE—UNIVERSITY BUILDING.

SEC. 32. The board of trustees of the university of Wyoming is hereby authorized to complete the erection of the university building. The said work shall be done under the supervision of said board of trustees, and said board shall be authorized to contract for the doing of said work upon such terms and under such restrictions and limitations as to the said board shall seem advisable.

SEC. 33. For the purposes named in the last preceding section and for the purpose of paying any existing deficiency incurred in the erection of the university building, the auditor and treasurer of the territory are hereby authorized to issue the bonds of the territory in an amount not exceeding twenty-five thousand dollars, in the manner hereinafter named. The money derived from the sale

of such bonds, together with any premium received upon such sale, shall be kept in a separate fund to be known as the "university building fund," and the same shall be paid out only for the purposes named in this and the last preceding section.

SEC. 34. Section thirty-seven hundred and one of the Revised Statutes of Wyoming, is hereby amended and re-enacted so as to read as follows: "Sec. 3701. Such board of trustees shall make a biennial report to the governor not less than thirty days before each meeting of the Legislative Assembly, giving a full and complete history of the work accomplished in the university; making an itemized statement of all receipts and disbursements, stating the number of pupils, together with their places of residence, and presenting a detailed estimate of the wants and necessities of the university for the two years next ensuing."

SEC. 35. Section thirty-seven hundred and sixteen of the Revised Statutes of Wyoming is hereby amended and re-enacted so as to read as follows: "Sec. 3716. To provide an income for such university there shall be assessed upon all taxable property in the Territory in each year, a tax of one-half of a mill on each and every dollar of the assessed valuation of such property, which tax shall be levied, collected and paid to the territorial treasurer, in the manner provided by law, for the levy, collection and payment of other territorial taxes. Said tax, when so paid to the territorial treasurer, shall be paid to the treasurer of said board of trustees, upon the warrant of the territorial auditor, to be issued upon the request of said board of trustees. The compensation of the territorial treasurer for the handling of the moneys named in this section shall be limited to one-third of one per cent. upon

the money arising from the tax named in this section."

SEC. 36. There is hereby appropriated out of any funds in the territorial treasury, not otherwise appropriated, the sum of nine thousand dollars for the purpose of supplying in part an income for said university during the present year; and said money shall be paid to the treasurer of said board of trustees, upon the warrant of the territorial auditor, to be issued upon the request of the said board of trustees.

SEC. 37. Section thirty-seven hundred of the Revised Statutes of Wyoming is hereby amended and re-enacted so as to read as follows: "Sec. 3700. The government of the university shall be vested in a board of seven trustees, four of whom shall at all times be residents of the city of Laramie."

Chap. 30, S. L. Wyo. 1888.

Sections of the Wyoming Constitution Cited in the Opinion of the Supreme Court of Wyoming and Brief of Counsel.

"No *ex post facto* law, nor any law impairing the obligation of contracts, shall ever be made."

[Sec. 35, Art. I.]

"The legislature shall not pass local or special laws in any of the following enumerated cases, that is to say: For granting divorces; laying out, opening, altering or working roads or highways; vacating roads, town plats, streets, alleys or public grounds; locating or changing county seats; regu-

lating county or township affairs; incorporation of cities, towns or villages; or changing or amending the charters of any cities, towns or villages; regulating the practice in courts of justice; regulating the jurisdiction and duties of justices of the peace, police magistrates or constables; changing the rules of evidence in any trial or inquiry; providing for changes of venue in civil or criminal cases; declaring any person of age; for limitation of civil actions; giving effect to any informal or invalid deeds; summoning or impaneling grand or petit juries; providing for the management of common schools; regulating the rate of interest on money; the opening or conducting of any election or designating the place of voting; the sale or mortgage of real estate belonging to minors or others under disability; chartering or licensing ferries or bridges or toll roads; chartering banks, insurance companies and loan and trust companies; remitting fines, penalties or forfeitures; creating, increasing or decreasing fees, percentages or allowances of public officers; changing the law of descent; granting to any corporation, association or individual, the right to lay down railroad tracks, or any special or exclusive privilege, immunity or franchise whatever, or amending existing charter for such purpose; for punishment of crimes; changing the names of persons or places; for the assessment or collection of taxes; affecting estates of deceased persons, minors or others under legal disabilities; extending the time for the collection of taxes; refunding money paid into the state treasury; relinquishing or extinguishing in whole or in part, the indebtedness, liabilities or obligation of any corporation or person to this State or to any municipal corporation therein; exempting property from taxation; restoring to citizenship persons

convicted of infamous crimes; authorizing the creation, extension or impairing of liens; creating offices or prescribing the powers or duties of offices in counties, cities, townships or school districts; or authorizing the adoption or legitimation of children. In all other cases where a general law can be made applicable no special law shall be enacted." [Sec. 27, Art. III.]

"No appropriation shall be made for charitable, industrial, educational or benevolent purposes to any person, corporation or community not under the absolute control of the State, nor to any denominational or sectarian institution or association." [Sec. 36, Art. III.]

"The legislature shall provide for the establishment and maintenance of a complete and uniform system of public instruction, embracing free elementary schools of every needed kind and grade, a university with such technical and professional departments as the public good may require and the means of the state allow, and such other institutions as may be necessary." [Sec. 1, Art. VII.]

"The establishment of the University of Wyoming is hereby confirmed, and said institution, with its several departments, is hereby declared to be the University of the State of Wyoming. All lands which have been heretofore granted or which may be granted hereafter by congress unto the university as such, or in aid of the instruction to be given in any of its departments, with all other grants, donations or devises for said university, or for any of its departments, shall vest in said university, and be exclusively used for the purposes for which they were granted, donated or devised. The said lands may be leased on terms approved

by the land commissioners, but may not be sold on terms not approved by congress."

[Sec. 15, Art. VII.]

"The legislature shall provide by law for the management of the university, its lands and other property by a board of trustees, consisting of not less than seven members, to be appointed by the governor by and with the advice and consent of the senate, and the president of the university, and the superintendent of public instruction, as members *ex officio*, as such having the right to speak, but not to vote. The duties and powers of the trustees shall be prescribed by law."

[Sec. 17, Art. VII.]

"The legislature shall have no power to change or to locate the seat of government, the state university, the insane asylum, or state penitentiary, but may after the expiration of ten (10) years after the adoption of this constitution, provide by law for submitting the question of the permanent locations thereof, respectively, to the qualified electors of the state, at some general election, and a majority of all votes upon said question cast at said election, shall be necessary to determine the location thereof; but for said period of ten (10) years, and until the same are respectively and permanently located, as herein provided, the location of the seat of government and said institutions shall be as follows:

The seat of government shall be located at the City of Cheyenne, in the county of Laramie. The state university shall be located at the City of Laramie, in the county of Albany. The insane asylum shall be located at the town of Evanston, in the county of Uinta. The penitentiary shall be located in the City of Rawlins, in the county of

Carbon; but the legislature may provide by law that said penitentiary may be converted to other public uses. The legislature shall not locate any other public institutions except under general laws, and by vote of the people."

[Sec. 23. Art. VII.]

"The legislature shall provide for the organization of corporations by general law. All laws relating to corporations may be altered, amended or repealed by the legislature at any time when necessary for the public good and general welfare, and all corporations doing business in this State may as to such business be regulated, limited or restrained by law not in conflict with the constitution of the United States."

[Sec. 1, Art. X.]

"All powers and franchises of corporations are derived from the people and are granted by their agent, the government, for the public good and general welfare, and the right and duty of the state to control and regulate them for these purposes is hereby declared. The power, rights and privileges of any and all corporations may be forfeited by wilful neglect or abuse thereof. The police power of the state is supreme over all corporations as well as individuals." [Sec. 2, Art. X.]

State Laws Cited in Opinion of the Supreme Court of Wyoming and Brief of Counsel.

CHAPTER 74.

ASSENTING TO AN ACT OF CONGRESS RELATING TO THE APPLICATION OF PROCEEDS FROM THE SALE OF PUBLIC LANDS.

AN ACT assenting to the provisions of an act of congress approved August thirtieth, eighteen hundred and ninety, entitled "an act to apply a portion of the proceeds of the public lands to the more complete endowment and support of the colleges for the benefit of of agriculture and the mechanic arts, established under the provisions of an act of congress, approved July second, eighteen hundred and sixty-two."

Be it enacted by the Legislature of the State of Wyoming:

SECTION 1. The University of Wyoming having been designated by the secretary of the interior as the proper institution to receive and expend the moneys appropriated by an act of congress, approved August thirtieth, eighteen hundred and ninety, entitled "an act to apply a portion of the

proceeds of the public lands to the more complete endowment and support of the colleges for the benefit of agriculture and the mechanic arts, established under the provisions of an act of congress, approved July second, eighteen hundred and sixty-two," until such time as there may be an agricultural college established in this state, separate and apart from said University of Wyoming, assent is hereby given to all the terms and conditions of the said act of congress and the grants of moneys authorized and made by said act are hereby assented to and accepted by the state of Wyoming.

SEC. 2. The treasurer of the State of Wyoming is hereby designated as the proper officer to accept and receive said moneys so granted by said act of congress, and to disburse the same in accordance with the provisions of section two of the said act of congress.

SEC. 3. This act shall take effect and be in force from and after its passage.

Approved January 10, 1891.

Chap. 74, S. L. Wyo. 1890-91.

[R. S. 1899, Sec. 499.]

CHAPTER 75.

AS TO GOVERNMENT AND MAINTENANCE OF THE UNIVERSITY.

AN ACT to amend so much of chapter one of title forty-two of the Revised Statutes of Wyoming, as relates to the establishment, government and maintenance of the University of Wyoming.

* * * * * * * * * *

"There is established in this state, at the city of Laramie, an institution of learning under the name and style of 'The University of Wyoming.'"

Sec. 1, Chap. 75, S. L. 1890-91.
[Sec. 485, R. S. Wyo., 1899]

"The objects of such university shall be to provide an efficient means of imparting to young men and young women, without regard to color, on equal terms, a liberal education, together with a thorough knowledge of the various branches connected with the scientific, industrial and professional pursuits. To this end it shall embrace colleges or departments of letters, of science, and of the arts, together with such professional or other departments as in course of time may be connected therewith. The department of letters shall embrace a liberal course of instruction in language, literature and philosophy, together with such

courses or parts of courses in the college or department of science as are deemed necessary.

The college or department of science shall embrace courses of instruction in the mathematical, physical and natural sciences, together with such courses in language, literature and philosophy as shall constitute a liberal education. The college or department of the arts shall embrace courses of instruction in the practical and fine arts; especially in the applications of science to the arts of mining and metallurgy, mechanics, engineering, architecture, agriculture and commerce, together with instruction in military tactics, and in such branches in the department of letters as are necessary to a proper fitness of students for their chosen pursuits, and as soon as the income of the university will allow, in such order as the wants of the public shall seem to require, the said courses in the sciences and their practical application shall be expanded into full and distinct schools or departments."

Sec. 2, Chap. 75, S. L. Wyo., 1890-91
[Secs. 486-7, R. S. Wyo., 1899.]

* * * * * * * * *

"The University of Wyoming, having been designated by the secretary of the interior as the proper institution to receive and expend the moneys appropriated by an act of congress approved August thirtieth, eighteen hundred and ninety, entitled 'an act to apply a portion of the proceeds of the public lands to the more complete endowment and support of colleges for the benefit of agriculture and the mechanic arts, established under the provisions of an act of congress approved July second, eighteen hundred and sixty-two,' until such time as there may be an agricultural col-

lege established in this state, separate and apart from the said University of Wyoming, assent is hereby given to all the terms and conditions of said act of congress, and grants of money authorized and made by said act, by the act of March second, eighteen hundred and eighty-seven, relative to the establishment of agricultural experiment stations, or any other act for like purposes, are hereby assented to and accepted by the state of Wyoming. Except where other designation is made by congress, all moneys granted or donated by congress in aid of scientific instruction or experimentation, and set apart by the legislature for such use by the University of Wyoming, shall be accepted and received by the state treasurer, and by him placed at the disposal of the board of trustees of the said university by transfer to the treasurer of said board, for disbursement in accordance with the provisions of the act or acts of congress aforesaid."

Sec. 13, Chap. 75, S. L. Wyo. 1890-91.
[Sec. 13, R. S. Wyo. 1899.]

* * * * * * * * *

Approved January 10, 1891.

CHAPTER 92.

THE WYOMING AGRICULTURAL COLLEGE.

AN ACT providing for the establishment of "The Wyoming Agricultural College" and to provide for the location and government of the same, and for the instruction to be therein given, and for other purposes.

Be it enacted by the Legislature of the State of Wyoming:

SECTION 1. There shall be established in this state "The Wyoming Agricultural College" which shall be located by vote of the people as hereinafter provided, and which shall be a state public educational institution.

SEC. 2. The objects of said agricultural college shall be to provide an efficient means of imparting to young men and young women, without regard to color, on equal terms, a liberal education and a thorough knowledge of such arts and sciences as will aid in the prosecution of agricultural pursuits with their varied applications.

SEC. 3. The government of said agricultural college shall be vested in a board of five trustees, who shall be appointed by the governor, by and with the advice and consent of the senate.

SEC. 4. The term of office of such trustees shall be four years, except as provided in the next two sections.

SEC. 5. It shall be the duty of the governor at the next session of the legislature after the location of such agricultural college as herein provided, to nominate, by and with the advice and consent of the senate, five residents of the state as members of the board of trustees of said agricultural college, three of whom shall serve for two years, and two of whom shall serve for four years, and thereafter during the session of each succeeding legislature, the governor shall nominate, and by and with the advice and consent of the senate, appoint successors to such of said trustees whose terms of office shall have expired or will expire during such session of the legislature.

SEC. 6. Any vacancy in the said board of trustees caused by death, resignation, removal from the state, or otherwise, shall be filled by appointment to be made by the governor, which appointment shall continue until the next session of the legislature and no longer.

SEC. 7. A majority of the said board of trustees shall constitute a quorum for the transaction of business, and the said board shall hold regular meetings at the seat of the said agricultural college on the first day of the months of January, April, July and October of each year.

SEC. 8. The said board of trustees shall have power:

First—To elect one of its members president of said board.

Second—To appoint a secretary and treasurer from among the members of such board and

such other officers as it may deem necessary for the good order and government of the said agricultural college, and to prescribe the duties and fix the compensation of all such officers.

Third—To provide by resolution or otherwise for special meetings of such board.

Fourth—To procure by purchase, donation or otherwise, in the name of the State of Wyoming, within or near the limits of the city, town or village chosen as the seat of said agricultural college, as hereinafter provided, a suitable site upon which to erect suitable, convenient and proper buildings for the said agricultural college and to superintend the erection of such building: *Provided*, That said trustees shall not purchase any site or contract for the erection of any building until the funds shall be in their hands with which to pay for the same.

Fifth—To possess and use for the benefit of the said agricultural college the buildings and sites that may be provided therefor.

Sixth—To take and hold for the use and benefit of the said agricultural college any real or personal estate, and to dispose of the same in such manner as they may deem most conducive to the interests of said agricultural college.

Seventh—To expend any and all income that may be placed under the control of such board, by donations or by law or otherwise, in such manner as shall best promote the interests and prosperity of the said institution.

Eighth—To elect a president, such professors, tutors and other officers of the faculty of the said institution, as they may deem necessary, who shall hold their offices during the pleasure of such trustees.

Ninth—To prescribe the duties, salaries and emoluments of such professors, tutors and officers.

Tenth—To prescribe the course of study and discipline to be observed in said institution and the price of tuition therein.

Eleventh—To make all by-laws and rules necessary and proper to carry into effect the powers herein conferred.

SEC. 9. The president, professors and tutors of said agricultural college shall be styled the faculty thereof, and as such shall have power:

First—To enforce the rules and regulations adopted by the trustees of said institution for the government of the students thereof.

Second—To reprove and censure students as they may deserve, and to suspend those who continue refractory until a determination of the board of trustees can be had thereof.

Third—To grant and confer, by and with the consent and approval of the trustees, such literary honors and degrees as are usually granted and conferred in institutions of the same class in the United States, and in testimony thereof to give suitable diplomas under the seal of the state and signatures of the faculty.

SEC. 10. No member of the faculty of the said agricultural college, shall, while acting in that capacity, be a trustee thereof.

SEC. 11. No religious qualification or test shall be required of any student, trustee, president, professor, tutor or officer of said institution, or as a condition for admission to any privilege in the same, and no sectarian tenets or principles shall be taught, instructed or inculcated at said institution, by any president, professor or tutor therein.

SEC. 12. The trustees of said institution shall provide for the tuition, free of charge, of such students from each county as may be selected and appointed by the board of county commissioners of such county.

SEC. 13. In the management and application of any property, real or personal, granted, devised or bequeathed to the use of said agricultural college, or the proceeds thereof, the trustees shall conform to the will and directions of the donor thereof, if any such directions shall have been connected with such grant, devise, bequest or donation.

SEC. 14. The trustees of said institution shall require their treasurer to give a bond with sureties to be approved by them, in double the sum likely to come into his hands.

SEC. 15. The secretary of said board of trustees shall keep a true record of the proceedings of the board and shall make and certify copies thereof. He shall also keep an account of the students in the institution, according to their classes, showing their respective ages and places of residence.

SEC. 16. The treasurer of said board shall keep full, true and faithful accounts of all moneys received by him as such treasurer, and of all expenditures and disbursements thereof. He shall pay out the moneys received by him as such treasurer, on the order of the board of trustees, certified by their secretary. He shall keep accurate accounts of all persons having dealings with the institution for which he is treasurer. Shall collect the tuition fees due the same and shall submit a full and proper statement of the finances of such institution, of its receipts and disbursements, at each of the regular meetings of said board, and at such other times as said board may direct.

SEC. 17. A board of visitors for said agricultural college, to consist of three persons, shall be appointed biennially, at the commencement of the college year, by the governor of the state. It shall be the duty of the board of visitors for said institution to make a personal examination into the state and condition thereof and all its affairs,twice at least in each year, and report the result to the governor, suggesting such improvements as they may deem proper, which report shall be submitted to the legislature at its next session. Such visitors shall receive no compensation for their services.

SEC. 18. The location of said Agricultural College shall be determined by vote of the people at the general election to be held on the Tuesday next after the first Monday in November, in the year one thousand eight hundred and ninety-two. Every city, town and village in the State of Wyoming, containing not less than one hundred inhabitants, and at an elevation above the sea level of not more than fifty-five hundred feet, shall be eligible as a seat for said Agricultural College.

SEC. 19. Any city, town or village eligible as aforesaid may be nominated as a candidate for the seat of said Agricultural College in the manner provided by the law for the nomination of candidates for public offices, to be filled by the electors of the entire state, and a certificate of such nomination shall be filed with the secretary of state in the manner and at the time provided by law for certificates of nomination of candidates for offices to be filled by the electors of the entire state at the regular election to be held in November in the year one thousand eight hundred and ninety-two.

SEC. 20. The secretary of state shall certify to the county clerk of each county at the time and

in the manner required in the case of candidates for offices to be filled by the electors of the entire state at the regular election to be held in November in the year one thousand eight hundred and ninety-two, a list of all the cities, towns and villages nominated as candidates for the seat of said Agricultural College.

SEC. 21. The county clerk of each county shall cause to be printed in the official ballots provided for the general election in November, one thousand eight hundred and ninety-two, in the manner provided for the printing of the names of candidates for public offices, the names of each city, town and village nominated as a candidate for the seat of said Agricultural College as certified by the secretary of state, and shall also cause to be printed on such ballot, opposite the names of the candidates for the seat of the said Agricultural College, the words, "vote for one," and at the head of the list of the names of said candidates the words "for seat of the Wyoming Agricultural College."

SEC. 22. Each voter shall designate on his ballot at the election aforesaid, the name of the city, town or village for which he intends to vote as the seat of the said Agricultural College, in the same manner as provided by law for the designation upon such ballot of the names of candidates for public offices for whom he intends to vote.

SEC. 23. The votes, so far as relates to the location of said Agricultural College shall be canvassed and certified in all respects as is provided by law for the canvassing and certification of the votes for candidates for public offices voted for by the electors of the entire state.

SEC. 24. The city, town or village receiving

the highest vote as the seat of said Agricultural College shall be the permanent seat at or near which the same shall be located: *Provided*, however, That any and all votes that may be cast for any city, town or village not eligible, as aforesaid, shall not be counted in determining the seat of said Agricultural College.

SEC. 25. This act shall take effect and be in force from and after its passage.

Approved January 10, 1891.

Chap. 92, S. L. Wyo. 1890-91.

CHAPTER 109.

REGULATION OF EXPENDITURES FOR AGRICULTURAL COLLEGE.

AN ACT regulating the appropriation, use and expenditure of the moneys received under an Act of Congress approved March 2, 1887, entitled "An Act to establish agricultural experiment stations in connection with the colleges established in the several states under the provisions of an Act approved July 2, 1862, and of the Acts supplementary thereto."

Be it enacted by the Legislature of the State of Wyoming:

SECTION 1. The moneys received under an Act of Congress, approved March 2, 1887, entitled "An act to establish agricultural experiment stations in connection with the colleges established in the several states under the provisions of an Act approved July 2, 1862, and of the Acts supple-

mentary thereto," shall be appropriated, used and expended pursuant to the provisions of this Act, and not otherwise.

SEC. 2. The trustees of the university or college at Laramie, Wyoming, in connection with which such experimental station is established shall annually, by resolution, specifically appropriate and designate the uses to which such money shall be applied and the purposes for which the same shall be expended. Such uses and purposes at all times to be within the use and purpose for which such money is donated under the Acts of congress regulating the same, and no part of such money shall be used or expended in any manner or for any purpose not covered by such appropriation, and no indebtedness shall be contracted or expenditure made in excess of such appropriation.

SEC. 3. The treasurer of the university or college in connection with which such experimental station is established shall annually, on or before the 31st day of December submit to the governor a printed report setting forth the appropriation resolution for that year and containing an itemized statement of the receipt and disbursement of such money, showing clearly the purposes for which the same has been expended and the amount thereof expended upon each experimental station. One hundred copies of such printed report shall be filed with the secretary of state for distribution among the members of the legislature and other public officers.

SEC. 4. This Act shall take effect and be in force from and after its passage.

Approved February 21, A. D. 1895.

Chap. 109, S. L. Wyo. 1895.

[Secs. 502-3, R. S. Wyo., 1899.]

CHAPTER 110.

APPROPRIATIONS FOR UNIVERSITY.

AN ACT concerning appropriations for the support and maintenance of the University of Wyoming and requiring an annual accounting of the expenditures of the same.

Be it enacted by the Legislature of the State of Wyoming:

SECTION 1. Hereafter there shall be appropriations made by the legislature of the moneys intended for the support and maintenance of the University of Wyoming, and such appropriations shall specify as nearly and accurately as the same can be done the specific purposes for which such moneys are intended and may be used. Such appropriations shall apply to and include all moneys received by the university from the United States for the endowment and support of colleges for the benefit of agriculture and mechanic arts, but moneys so received from the United States shall be appropriated, applied and used solely for the purposes specified in the Acts of Congress regulating the same. No expenditure shall be made in excess of such appropriation and no moneys so appropriated shall be used for any purpose other than that for which they are appropriated.

SEC. 2. It shall be the duty of the treasurer of the university, immediately after the close of each current year, to submit to the governor a printed report containing an itemized account of all moneys received for the support and maintenance of the university for that year, and of all expenditures made therefrom; and he shall at the same time file in the office of the secretary of state, for distribution among the members of the legislature and other public officers, one hundred copies of such report.

SEC. 3. This Act shall take effect and be in force from and after its passage.

Approved February 21, 1895.

Chap. 110, S. L. Wyo. 1895.
[Sec. 501, R. S. Wyo., 1899.]

CHAPTER 13.

AGRICULTURAL COLLEGE LAND FUNDS.

AN ACT relating to the custody, loaning and investment of the proceeds arising from the sale and rental of the public lands donated by Congress to this State for the use and support of the Agricultural College, and providing for the use of the profits and interest income therefrom.

Be it enacted by the Legislature of the State of Wyoming:

SECTION 1. That during such time as the University of Wyoming shall be and remain the recip-

ient of the funds donated by the United States Government to the State, under the Act of Congress of March 2nd, 1887, establishing agricultural experiment stations, and the Act of Congress of August 30th, 1890, applying certain moneys in aid of agricultural colleges, and all Acts of Congress amendatory thereof or supplemental thereto, the Treasurer of the State shall, upon the order of the Board of Trustees of said University, invest all moneys in his hands derived or arising from the sale, disposal or rental of the lands or any of them, donated to this State by Congress for the use and support of an Agricultural College, in such securities and loans as may be unanimously approved by all the Trustees present at any regular meeting of said Board of Trustees of said University, provided, however, that no profit or interest from said loans or investments shall be so paid over for the support of said institution as hereinafter provided, until all loss or losses, if any, out of the principal of said funds shall be made good and restored out of the said profits and interest; said loans or investments to be made in the name of the State of Wyoming, for the use of the Agricultural College Fund, the proceeds and payments made upon or derived from said loans or investments, both principal and interest, to be paid into the Treasury of the State for the use of said fund, the principal for re-investment and the profit and interest for the use of said College as herein provided.

SEC. 2. Said fund shall be invested in bonds of the United States, of this State, or in bonds yielding not less than five per centum per annum upon the par value thereof issued by any county, municipal corporation or school district of this State.

SEC. 3. The net interest and profit received and derived from any loan or investment made in pursuance of the authority conferred by the last preceding section after all loss or losses have been made good as aforesaid shall at all times be available for use and may be used by the Board of Trustees of said University for any purpose connected with the supporting and maintenance of the Agricultural College at the University of Wyoming, not inconsistent or in conflict with any Act of Congress herein referred to, or any Act amendatory thereof or supplemental thereto.

SEC. 4. This Act shall take effect and be in force from and after its passage.

Approved February 10th, A. D. 1899.

Chap. 13, S. L. 1899.

[Sec. 530, R. S. Wyo., 1899.]

CHAPTER 51.

REPORTS OF UNIVERSITY.

AN ACT relating to the reports to be made by the President, Secretary and Treasurer of the Board of Trustees of the University of Wyoming, and repealing Section 7 of Chapter 75 of the Laws of 1891, Section 3 of Chapter 109 of the Laws of 1895, and Section 2 of Chapter 110 of the Laws of 1895.

Be it enacted by the Legislature of the State of Wyoming:

SECTION 1. At the close of each scholastic year, (June 30th), the Trustees of the University

of Wyoming, through their President, shall make a report in detail to the Governor, exhibiting the progress, condition and wants of the University and of each school or department thereof; the course of study in each, the number of professors and students, together with the nature, costs and results of important investigations, and such other information as they may deem important, or as may be required by any law of this State, or of the United States. Accompanying such report, and as a part thereof, the Secretary and Treasurer of the Board of Trustees shall unite in an itemized report showing the amount of receipts and disbursements for the year, as had and made by said Board, showing the appropriation resolution for that year, showing clearly the purposes for which the same have been expended, and the amount thereof expended upon each school or department of work, including the experiment station.

SEC. 2. * * * * *

SEC. 3. * * * * * *

SEC. 4. This Act shall take effect and be in force from and after its passage.

Approved February 18th, A. D. 1899.

Chap. 51, S. L. Wyo. 1899.

[Sec. 402, R. S. Wyo., 1899.]

CHAPTER 14.

INVESTMENT OF UNIVERSITY FUNDS.

AN ACT to amend and re-enact Section five hundred and twenty of the Revised Statutes of Wyoming, 1899, relating to the investment of Agricultural College Land Income funds.

Be it enacted by the Legislature of the State of Wyoming:

SECTION 1. That Section five hundred and twenty of the Revised Statutes of Wyoming, 1899, relating to the investment of Agricultural College Land Income Funds be amended and re-enacted, so as to read as follows:

Sec. 520. During such time as the University of Wyoming shall be and remain the recipient of the funds donated by the United States government to the state, under the act of congress of March 2, 1887, establishing agricultural experiment stations, and the act of congress of August 30, 1890, applying certain moneys in aid of agricultural colleges, and all acts of congress amendatory thereof and supplemental thereto, the treasurer of the state shall, upon the order of the board of trustees of said university, invest all moneys in his hands derived or arising from the sale, disposal or rental of

the lands or any of them, donated to this state by congress for the use and support of an agricultural college, in such securities and loans as may be approved by the president, vice president and treasurer of said board of trustees of said university, provided, however, that no profit or interest from said loans or investments shall be so paid over for the support of said institution as hereinafter provided, until all loss or losses if any, out of the principal of said funds shall be made good and restored out of the said profits and interest; said loans or investments to be made in the name of the State of Wyoming for the use of the Agricultural College Fund, the proceeds and payments upon or derived from said loans or investments, both principal and interest to be paid into the treasury of the state for the use of said fund, the principal for reinvestment, and the profit and interest for the use of said college as herein provided.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved February 9th, 1901.

Chap. 14, S. L. 1901.

CHAPTER 42.

AGRICULTURAL COLLEGE FUNDS.

AN ACT to amend and re-enact Section 520 of the Revised Statutes of Wyoming, 1899, as amended by Chapter 14, of the Session Laws of Wyoming, 1901, and to repeal Section 521, of the Revised Statutes of Wyoming, 1899, relating to the investment of the Agricultural College Permanent Land Fund, and providing for an Agricultural College Permanent Fund of 1903, and appropriating the rentals of Agricultural College lands and the interest and profit on Agricultural College funds.

Be it enacted by the Legislature of the State of Wyoming:

SECTION 1. That Section 520, of the Revised Statutes of Wyoming, 1899, as amended by Chapter 14, of the Session Laws of Wyoming, 1901, be amended and re-enacted, so as to read as follows:

SEC. 520. During such time as the University of Wyoming shall be, and remain the recipient of the funds, donated by the United States Government, to the State, under the act of Congress of March 2, 1887, establishing agricultural experiment stations and the act of Congress of August 30, 1890, applying certain moneys in aid of Agricultural Col-

leges, and all acts of Congress amendatory thereof and supplemental thereto, the Treasurer of the State shall invest in the same class of securities, and at the same rate of interest as provided by law for State funds, all moneys in his hands, derived or arising from the sale of the lands, or any of them, donated to this State by Congress for the use and support of an Agricultural College; such securities to be approved as other loans of State moneys are approved, except that in addition thereto they shall be approved by the President or the Vice President of the Board of Trustees of the State University. Provided, however, that no profit or interest from such loans or investments shall be paid over for the support of said institution, as hereinafter provided, until all loss or losses, if any, out of the principal of said funds, shall be made good and restored out of said profits and interest; said loans or investments to be made in the name of the State of Wyoming, the profit and interest upon, or derived from such loans and investments, to be paid into the Treasury of the State, for use as provided by Section 522, Revised Statutes of 1899; this section to apply to all moneys that may in any way become a part of the Agricultural College Permanent Land Fund.

SEC. 2. The moneys now in the Agricultural College Land Income Fund, in the hands of the State Treasurer, are hereby constituted a permanent fund, to be known as "The Agricultural College Permanent Fund of 1903," and the same is to be loaned or invested in the manner described by Section 1 of this act, or in whatever manner may be designated by law.

SEC. 3. All moneys hereafter arising from the rentals of lands, known as "Agricultural College

Lands," the interest and profits derived from the investment of the "Agricultural College Permanent Land Fund," and the interest and profits derived from the investment of the "Agricultural College Permanent Fund of 1903," are hereby appropriated and made available for use and may be used by the board of trustees of the University of Wyoming for any purpose connected with the supporting and maintenance of the Agricultural College at the University of Wyoming, not inconsistent or in conflict with any act of Congress referred to, or any act amendatory or supplemental thereto; said funds to be paid by the State Treasurer to the Treasurer of the Board of Trustees of the State University, upon the warrant of the State Auditor, to be issued upon request of said Board of Trustees.

SEC. 4. That Section 521, of the Revised Statutes of Wyoming, be and the same is hereby repealed.

SEC. 5. This act shall take effect and be in force from and after its passage.

Approved February 19th, 1903.

Chap. 42, S. L. Wyo. 1903.

CHAPTER 10.

REPEAL OF WYOMING AGRICULTURAL COLLEGE.

AN ACT to repeal Chapter 92 of the Session Laws of the State of Wyoming of the years A. D. 1890-1891, being an act entitled "An act providing for the establishment of The Wyoming Agricultural College, and to provide for the location and government of the same, and for the instruction to be given therein, and for other purposes," approved January 10th, A. D. 1891; and also to repeal so much of said act as is embraced in Sections 504 to 519, both inclusive, of Chapter 2, Title 6, of the Revised Statutes, Wyoming, 1899, entitled "The Wyoming Agricultural College."

Be it enacted by the Legislature of the State of Wyoming:

SECTION 1. That Chapter 92 of the Session Laws of the State of Wyoming of the years A. D. 1890-1891, being an act entitled, "An act providing for the establishment of 'The Wyoming Agricultural College,' and to provide for the location and government of the same, and for the instruction to be therein given, and for other purposes," approved January 10th, A. D. 1891; and also so

much of said act as is embraced in Sections 504 to 519, both inclusive, of Chapter 2, Title 6, of the Revised Statutes of Wyoming, 1899, entitled "The Wyoming Agricultural College," be and the same are hereby repealed.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved February 7th, 1905.

84 Pac. 90, *Agric. College v. Irvine.*

Chap. 10, S. L. Wyo. 1905.

RELIEF OF WYOMING AGRICULTURAL COLLEGE.

The sum of four hundred and forty dollars, or so much thereof as may be necessary, is hereby appropriated out of any funds in the State Treasury, not otherwise appropriated, to reimburse the Wyoming Agricultural College for two-thirds of the appraised value of live stock slaughtered by order of the State Veterinarian.

[Sec. 15, Chap. 99, S. L. Wyo. 1905.]

[illegible]

Supreme Court of the United States.

No. 272.—October Term, 1906.

The State of Wyoming, ex relatione The Wyoming Agricultural College and Matt Borland, et al., Plaintiffs in Error,
vs.
William C. Irvine, as Treasurer of the State of Wyoming.

In error to the Supreme Court of the State of Wyoming.

[May 13, 1907.]

The plaintiff in error the State of Wyoming, on the relation of the Wyoming Agricultural College and its officers, filed a petition in the Supreme Court of that State for a writ of mandamus against the defendant in error, the State Treasurer. The object of the proceeding was to compel the State Treasurer to pay to the treasurer of the college certain funds in his hands, being the proceeds of land grants and the amount of appropriations made by Congress for the promotion of education in agricultural and mechanical arts. An alternative writ issued, and the respondent appeared and demurred to the petition. The cause was then heard by the Supreme Court of Wyoming, and by that court the demurrer, which was regarded by court and counsel as sufficiently raising the merits of the controversy, was sustained and judgment rendered for the respondent. The case comes here upon writ of error, with allegations of violations of Federal rights, which, so far as material to the decision, are stated in the opinion.

Mr. Justice Moody delivered the opinion of the Court.

The Wyoming Agricultural College was established by an act of the legislature of that State. (Chap. 92, S. L. Wyo. 1890–91.) It was declared to be "a State public educational institution," with the object of giving to men and women, without regard to color, "a liberal education and a thorough knowledge of such arts and sciences as will aid in the prosecution of agricultural pursuits, with their varied applications."

The University of Wyoming was established by the Territory with the declared object of providing education for both sexes in "the different branches of literature, the arts and sciences, with their varied applications." The constitution of the State of Wyoming confirmed the establishment of the university and declared it to be the university of the

State of Wyoming. The first session of the State legislature enacted a law declaring more fully the objects of the university, which provided, among other things, that it should be open to both sexes, regardless of race or color and should "embrace colleges or departments of letters, of science and of the arts. . . . The college, or the department of the arts, shall embrace courses of instruction in the practical and fine arts, especially in the application of science to the arts of mining and metal lurgy, mechanics, engineering, architecture, agriculture and commerce, together with instruction in military tactics."

Land grants and appropriations, which presently will be described in detail, have been made by Congress for the support of education in the State, and the State, acting through its legislature, has accepted the appropriations under the conditions prescribed in the acts of Congress, and has appropriated these national bounties to the support of the university. The agricultural college claimed that under the acts of Congress bestowing these gifts it is entitled to them, and the denial of the Supreme Court of the State of this claim raises the Federal question first to be considered.

By the act of July 2, 1862, (12 Stat. at Large 503,) amended by act of March 3, 1883, (22 Stat. at Large 484,) Congress "granted to the several States, for the purposes hereinafter mentioned," certain quantities of the public lands, or, under certain conditions, in lieu thereof land scrip. The entire proceeds of the sale of the land or of the land scrip were directed to be safely invested by the States as a perpetual fund, whose interest should be "inviolably appropriated by each State, which may take and claim the benefit of this act, to the endowment, support and maintenance of at least one college, where the leading object shall be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agricultural and the mechanic arts, in such manner as the legislatures of the State may respectively prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life." The act further provided that "if any portion of the fund invested is lost, it shall be replaced by the State to which it belongs;" and that "no State while in a condition of rebellion or insurrection against the Government of the United States shall be entitled to the benefits of this act, and no State shall be entitled to the benefit of this act unless it shall express its acceptance thereof by its legislature."

The grant made in this statute is clearly to the State and not to any institution established by the State. *Haire* v. *Rice*, 204 U. S. 291.

By the act of August 30, 1890, (26 Stat. at Large, 417,) Congress made permanent annual appropriations of a certain sum of money "to each State and Territory for the more complete endownent and maintenance of col-

leges for the benefit of agriculture and the mechanic arts, now established, or which may be hereafter established, in accordance with an act of Congress approved July second, eighteen hundred and sixty-two, . . . to be applied only to instruction in agriculture, the mechanic arts, the English language, and the various branches of mathematical, physical, natural and economic science, with special reference to their applications in the industries of life, and to the facilities for such instruction." It is so obvious that these appropriations are made to the State and not to any institutions within the State, and that the States, acting through their legislatures, are to expend the appropriations in accordance with the trust imposed upon them, that it is unnecessary to quote the numerous expressions in this act which support that view. By the act of March 2, 1887, (24 Stat. at Large, 440,) Congress directed that a certain sum should be annually appropriated "to each State" for the support of agricultural experiment stations at the institutions established under the act of 1862. The law provides that the appropriation shall be paid to the treasurer of the institution where the agricultural experiment station is established, and no money has come or will come into the hands of the State Treasurer. It is, therefore, unnecessary to consider further the provisions of this act. There is in the hands of the State Treasurer the permanent fund established under the act of 1862, and one of the annual appropriations paid to him under the act of 1890. The interest on the fund and the annual appropriation the State treasurer is about to pay to the University of Wyoming in obedience to the laws of the State. The agricultural college claims that it is entitled under those statutes to receive this money. If this claim fails it is the end of the case. But, as has been shown, both the fund and its interest and the annual appropriations are the property of the State and not of any institution within it. The agricultural college shows no title or right to this money under these statutes. The whole case of the plaintiff in error fails at the threshold, and it is unnecessary to determine whether the State has complied with its trust in bestowing the Government bounty upon the University of Wyoming or has violated the obligation of a contract by repealing, as it has, the act establishing the agricultural college. These questions were discussed with learning and ability in the court below, and we do not intend to intimate any disagreement with the conclusions of that court. But as the plaintiff in error must fail in the attempt to compel the payment to it of the money in the hands of the defendant for the reasons already given, there is no need to go further in this court, and the judgment of the Supreme Court of Wyoming is therefore

Affirmed.

True copy.

Test:

Clerk Supreme Court U. S.